UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

x ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended **December 31, 2017**

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from___________________________to ___________________________

Commission File Number: **001-36532**

Sphere 3D Corp.

(Exact name of Registrant as specified in its charter)

Ontario, Canada	**98-1220792**
(State or other jurisdiction of incorporation or organization)	*(IRS Employer Identification No.)*

240 Matheson Blvd. East
Mississauga, Ontario, Canada, L4Z 1X
(Address of principal executive offices)

(408) 283-4754
(Registrant's Telephone Number, Including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Shares	NASDAQ Capital Market

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes ☐ No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes ☐ No x

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company x
(Do not check if a smaller reporting company)	Emerging growth company x

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant as of June 30, 2017 was approximately $13.9 million based on the closing price on the NASDAQ Capital Market reported for such date. Shares of common stock held by each officer and director and by each person who is known to own 10% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates of the registrant. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of March 16, 2018, there were 9,051,408 shares of the registrant's common stock outstanding.

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PART I

FORWARD-LOOKING INFORMATION

This Annual Report on Form 10-K contains forward-looking information that involves risks and uncertainties. This forward-looking information includes, but is not limited to, statements with respect to management's expectations regarding the future growth, results of operations, performance and business prospects of Sphere 3D. This forward-looking information relates to, among other things, the Company's future business plans and business planning process, the Company's uses of cash, and may also include other statements that are predictive in nature, or that depend upon or refer to future events or conditions.

The words "could", "expects", "may", "will", "anticipates", "assumes", "intends", "plans", "believes", "estimates", "guidance", and similar expressions are intended to identify statements containing forward-looking information, although not all forward-looking statements include such words. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances contain forward-looking information. Statements containing forward-looking information are not historical facts but instead represent management's expectations, estimates and projections regarding future events.

Although forward-looking statements in this Annual Report reflect the good faith judgment of our management, such statements can only be based on facts and factors currently known by us. Consequently, forward-looking statements are inherently subject to risks and uncertainties and actual results and outcomes may differ materially from the results and outcomes discussed in or anticipated by the forward-looking statements. Factors that could cause or contribute to such differences in results and outcomes include without limitation those discussed under the heading "Risk Factors" in Part I, Item 1A below, as well as those discussed elsewhere in this Annual Report. Readers are urged not to place undue reliance on these forward-looking statements, which speak only as of the date of this Annual Report. We undertake no obligation to revise or update any forward-looking statements in order to reflect any event or circumstance that may arise after the date of this Annual Report. Readers are urged to carefully review and consider the various disclosures made in this Annual Report, which attempt to advise interested parties of the risks and factors that may affect our business, financial condition, results of operations and prospects.

Any reference to the "Company", "Sphere 3D", "Sphere", "we", "our", "us", or similar terms refers to Sphere 3D Corp. and its subsidiaries. Unless otherwise indicated, all dollar amounts are expressed in U.S. dollars and references to "$" are to the lawful currency of the United States ("U.S."). References to "Notes" are Notes included in our Notes to Consolidated Financial Statements.

Item 1. Business

Sphere 3D provides next-generation solutions for standalone storage and long-term data archive products, as well as technologies that converge the traditional silos of compute, storage and network into one integrated "hyper-converged" or converged solution. We provide enterprise storage management solutions, the archiving of the data created by these solutions, and the ability to connect to public cloud services such as Microsoft Azure for additional delivery options and hybrid cloud capabilities. Our solutions are tightly integrated and include a patented portfolio for operating systems for storage, proprietary virtual desktop orchestration software, and proprietary application container software. Our software, combined with commodity x86 servers, or its purpose built appliances, deliver solutions that provide application mobility, security, data integrity and simplified management. These solutions can be deployed through a public, private or hybrid cloud and are delivered through our global reseller network and professional services organization. We have a portfolio of brands including Overland-Tandberg™, HVE ConneXions and UCX ConneXions, dedicated to helping customers achieve their IT goals.

We have created our own platform, Glassware 2.0™ ("Glassware"), for the delivery of applications from a server-based computing architecture. This is accomplished through a number of approaches to virtualization utilized by Glassware including the use of software "containers" and "microvisors." A container refers to software that takes an application and all the things required to run that application and encapsulates them with software. By doing so, users can run numerous applications from a single server and on a single copy of the operating system. A microvisor refers to the technology that allows non-Windows® based applications to run on the same servers as Windows software using a lightweight emulator. Glassware sales are not material.

Warrant Exchange Agreement

On March 16, 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 1,430,998 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. MF Ventures, LLC, participated in the Exchange by acquiring 299,999 common shares in exchange for a warrant to purchase 272,727 common shares.

Related Party Share Purchase Agreement

On February 20, 2018, the Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company ("Overland"), and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, the Company's Chief Executive Officer and Chairman of the Board of Directors (the "Purchaser") entered into a share purchase agreement (the "Purchase Agreement"), pursuant to which, among other things, and subject to certain closing conditions, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million (the "Purchase Price"), subject to a working capital adjustment (the "Share Purchase"). The net proceeds from the Share Purchase will be used to repay: (i) the Company's outstanding obligations under its Credit Agreement with Opus Bank; (ii) its outstanding obligations under the related party convertible note with FBC Holdings S.a.r.l. ("FBC Holdings"); and (iii) its related party subordinated promissory note with MF Ventures, LLC. The Special Committee of the Board of Directors of the Company and the Board of Directors of the Company (with Eric Kelly recusing himself) unanimously approved the entry into the Purchase Agreement by the Company.

Under the terms of the Purchase Agreement, the Share Purchase is contingent upon, and Purchaser must use its best efforts to arrange for, debt and/or equity financing in an amount at least equal to the Purchase Price in order to consummate the Share Purchase (the "Financing"). In addition, the Company must use commercially reasonable efforts to provide all cooperation reasonably requested by Purchaser regarding the Financing. Until the Financing is committed in accordance with Contingency Termination Event (as defined below), the Company is free to solicit and negotiate other offers to purchase the Company, Overland or any or all of their assets and has the right to terminate the Purchase Agreement for any or no reason without penalty (subject to the expense reimbursement provisions described below).

The closing of the Share Purchase and of the other transactions contemplated by the Purchase Agreement are subject to (i) the adoption of the Purchase Agreement by the affirmative vote of the holders of (a) at least 66 2/3% of the outstanding common shares of the Company cast in person or by proxy at the special meeting of shareholders and (b) a majority of the votes cast by certain "minority shareholders" in person or by proxy at the special meeting of shareholders (the "Shareholder Approval") and (ii) the transfer by the Company of (a) the businesses of (x) Unified ConneXions, Inc. and (y) HVE ConneXions, LLC (including the provision of information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions), and (b) the SNAP® network attached storage business to a subsidiary of the Company other than Overland or a subsidiary of Overland. The closing of the Share Purchase and of the other transactions contemplated by the Purchase Agreement are also subject to various other conditions, including the consummation of the Financing, the absence of any order, statute, rule, regulation, executive order, decree or injunction issued by any governmental entity prohibiting the Share Purchase, the absence of a pending claim, suit, action or proceeding material claims seeking to prohibit the Share Purchase, the accuracy of the representations and warranties contained in the Purchase Agreement, compliance with the covenants and agreements contained in the Purchase Agreement in all material respects, and the absence of a material adverse effect on either the Company or Overland.

The Company has made customary representations, warranties and covenants in the Purchase Agreement, including, among others, covenants (i) to conduct its business in the ordinary course during the period between the execution of the Purchaser Agreement and the closing of the Share Purchase, (ii) not to engage in specified types of transactions during this period unless agreed to in writing by Purchaser, (iii) to convene and hold a meeting of its shareholders for the purpose of obtaining the Shareholder Approval and (iv) subject to certain exceptions and only following the occurrence of the Contingency Termination Event (as defined below), not to solicit and negotiate other offers to purchase the Company, Overland or any or all of their assets or to withdraw, modify or qualify in a manner adverse to Purchaser the recommendation of the Board that the Company's shareholders vote in favor of approving the Share Purchase. The Company has also agreed to indemnification provisions in favor of Purchaser that are customary for transactions of this type.

Prior to the (i) execution and delivery of financing commitments in forms reasonably acceptable to the Company, which provide, among other things, for commitments from financing sources sufficient to pay the Purchase Price in the Share Purchase, (ii) execution and delivery by Purchaser of an irrevocable waiver in a form reasonably acceptable to the Company waiving Purchaser's condition to the obligation to close the Share Purchase that the Financing has been received and (iii) an executed certificate delivered by Purchaser to the Company regarding the accuracy of certain representations regarding the Financing (the "Contingency Termination Event"), the Company has the right to terminate the Purchase Agreement for any reason or for no reason. The Purchase Agreement also provides that, upon such termination of the Purchase Agreement by the Company, the Company has agreed to reimburse Purchaser up to approximately $350,000 for the reasonable and documented out-of-pocket expenses incurred by the Purchaser and the sources for the Financing in connection with the negotiation, execution and performance of the Purchase Agreement and the transactions contemplated thereby, as well as the fees and expenses of the Purchaser's outside counsel.

In addition, the Purchase Agreement contains certain other termination rights, including, following the occurrence of the Contingency Termination Event, the right of the Company to terminate the Purchase Agreement under specified circumstances to accept an unsolicited superior proposal from a third party. The Purchase Agreement provides that, following the occurrence of the Contingency Termination Event and upon termination of the Purchase Agreement by the Company under specified circumstances (including termination by the Company to accept a superior proposal) or by Purchaser under specified circumstances, a termination fee equal to the lesser of (i) $1.0 million and (ii) the amount of Purchaser's reasonable fees and expenses in connection with the negotiation, execution and performance of the Purchase Agreement (including the amount that the Purchaser must pay or reimburse to the sources for the Financing) will be payable by the Company to the Purchaser. Such termination fee is also payable following the occurrence of the Contingency Termination Event under certain other specified circumstances set forth in the Purchase Agreement. The Purchase Agreement also provides that each party to the Purchase Agreement may compel the other party or parties thereto to specifically perform its or their obligations under the Purchase Agreement. However, if the Purchase Agreement is terminated such that the Company termination fee becomes payable, the Purchaser will be precluded from any other remedy against the Company or Overland, including expense reimbursement and specific performance. Further, if the Purchase Agreement is terminated such that the expense reimbursement becomes payable, the Purchaser will be precluded from any other remedy against the Company or Overland, including the Company termination fee and specific performance. Subject to certain exceptions and limitations, either party may terminate the Purchase Agreement if the Share Purchase is not consummated by August 19, 2018.

Reverse Stock Split

On July 5, 2017, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

UCX and HVE Acquisition

In January 2017, we completed our acquisition of all of the outstanding equity interests of UCX and HVE (the "January 2017 acquisition"). UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's products, technologies, professional services and engineering talent, and HVE's engineering and virtualization expertise, we intend to expand our virtualization offerings as well as enhance our ability to accelerate the delivery of hybrid cloud solutions to customers.

At this time, we have included UCX and HVE's product revenue with our disk systems products. The business activities of UCX and HVE may result in individual transactions that are more significant than those that normally result from our legacy business lines. Those significant transactions may involve multiple elements and may involve circumstances where, based on customer requests, equipment may be delivered either to the end customer location or to a third-party location specified by the customer.

RDX® Asset Acquisition

In August 2015, we completed an acquisition of assets related to the RDX® removable disk product lines from Imation Corp. ("Imation"). We issued 61,165 common shares with an approximate value of $6.1 million, and a warrant exercisable for 10,000 additional common shares exercisable in connection with certain purchase price adjustments under the asset purchase agreement.

Products and Service

Disk Systems

RDX® Removable Disk Solutions

RDX® is a removable, purpose built back-up appliance on the market. The RDX® series provides scalability, centralized management, encryption and duplication, and reliability for backup, archive, data interchange and disaster recovery. RDX® provides enterprise performance and fast access, with transfer rates of up to 1188 gigabytes ("GB") per hour and capacities up to four terabytes ("TB") per cartridge, plus future expansion to larger capacity media enabled by our RDX+™ technology.

RDX® QuikStor® is available as an external desktop or internal server drive with SATA III, USB 3.0 or USB3+ connectivity. RDX QuikStation®4 and RDX QuikStation®8 are rackmount and removable disk appliances for SMBs, offering one GbE or ten GbE iSCSI connectivity and an online capacity of up to 32 TB. RDX HDD media are available in the range between 500 GB and four TB, RDX SSD media up to 256 GB and RDX WORM media with 500 GB and one TB. All RDX® media capacities are forward and backward compatible.

In 2017, we launched our rdxLOCK RansomBlock Feature to address certain cyber threats for organizations, including Ransomware. The RansomBlock functionality sets all data on the RDX® WORM media into a read-only mode. Additionally, it allows write operations to RDX® media for granted applications and processes similar to a personal fire wall.

HVE Converged and Hyper-converged Infrastructure

In 2017, we acquired HVE, a technology provider of next generation converged and hyper-converged infrastructure dedicated to creating Manageable, Scalable, Reproducible, and Predictable ("MSRP") solutions based on virtualization technologies running on high-performance, next generation platforms. HVE solutions are engineered, purpose-built converged and hyper-converged virtual workspace and server solutions that support a distributed architecture, scalable with predictable performances, and come bundled with continuous active monitoring. HVE product can include support for our Desktop Cloud Orchestrator™ ("DCO") based on customer requirements.

- The HVE-STACK high density server provides the computer and storage appliance for the data center and is ideal for high performance computing ("HPC"), cloud computing and virtual desktop infrastructure ("VDI"). The modular design and swappable components such as hard drives and power supplies great improve efficiency.
- The HVE-VELOCITY High Availability Dual Enclosure storage area network ("SAN") provides data reliability and integrity for optimal data storage, protection and recovery. It also provides a unified network attached storage ("NAS") and SAN solution with thin provisioning, compression and deduplication. The HVE-VELOCITY platform eliminates single points of failure. The 12GSAS SSD design allows for faster access to data. It is optimized for mission-critical, enterprise-level storage applications.
- The HVE 3DGFX is a VDI solution that offers that offers hardware and software technologies to provide an appliance that can handle from eight to 128 high demand users in a single 2U appliance. The HVE 3DGFX was designed and engineered as a purpose-built solution based upon the MSRP engineering approach.

G-Series Appliance and G-Series Cloud

The G-Series appliance powered by Glassware containerization technology is designed to simplify Windows application migration and enables access from any device including Macintosh, Windows, iOS, Chrome OS, and Android. The G-Series appliance is optimized for simplicity, flexibility and scalability. Through Glassware, a Microsoft Windows® based container technology, organizations looking to migrate applications to the cloud can quickly deploy a solution for virtualizing 16-bit, 32-bit, or 64-bit applications with their native functionality intact. For the provisioning of a 16-bit application to the G-Series appliance, users will often require advanced technical skills to set-up the application, or can contract professional services from the Company, or one of our certified system integrators. End users can access the containerized applications from cloud-connected devices (iOS, Android or Windows), through a lightweight downloadable app or simply from a browser. The G-Series appliance eliminates the complex tasks of designing, implementing, and maintaining application hosting environments and provides improved application session density and scale when compared to traditional hypervisor-based virtualization solutions.

G-Series Cloud is an offering available through Microsoft Azure and was developed to provide a virtual appliance that can be deployed from the Azure Marketplace to eliminate the task of designing, implementing, and maintaining localized application-hosting environments and their related hardware. G-Series Cloud is pre-configured, can be deployed in minutes and provides for a billing model based on usage.

Glassware Open Virtual Appliance and Open Virtual Format

An Open Virtual Appliance ("OVA") and Open Virtual Format ("OVF") compatible version of Glassware are the most recent productized offerings that allow for the deployment of Glassware from within existing VMWare environments. Similar to the G-Series Cloud offering, OVA and OVF versions were specifically developed to provide a virtual appliance from within a VMWare virtual machine and within VMWare environments. Although the format for deployment is similar for an OVA and/or OVF, Glassware is not an open source, as these formats only refer to the deployment methodology. All Glassware products come with a user interface to allow for administrators to quickly deploy applications and integrate with existing work flow and technologies.

SnapServer® Network Attached Storage Solutions

Our SnapServer® solutions are an ideal platform for primary or nearline storage, and deliver stability and integration with Windows®, UNIX/Linux, and Macintosh environments. For virtual servers and database applications, the SnapServer® family supports iSCSI block-level access with Microsoft VSS and VDS integration to simplify Windows management. For data protection, the SnapServer® family offers RAID protection, and snapshots for point-in-time data recovery. The SnapServer XSR Series™ products support DynamicRAID® and traditional RAID levels 0, 1, 5, 6, and 10. The Snap family of products, SnapCLOUD®, and SnapServer®, have integrated data mobility tools to enable customers to build private clouds for sharing and synchronizing data for anytime, anywhere access.

- The SnapServer® XSR40 is a 1U server that can be configured with up to four SATA III and SSD drives, and can scale to 400 TB of storage capacity by adding up to three SnapExpansion XSR™ enclosures.
- The SnapServer® XSR120 is a 2U server that can be configured with up to 12 SATA III, SAS and SSD drives, and can scale to 960 TB of storage capacity by adding up to seven SnapExpansion XSR™ enclosures.

Our GuardianOS® storage software is designed for the SnapServer® family of enterprise-grade NAS systems and delivers simplified data management and consolidation throughout distributed information technology environments by combining cross-platform file sharing with block-level data access on a single system. The flexibility and scalability of GuardianOS® reduces the total cost of ownership of storage infrastructures for small and medium businesses to large Fortune 500 enterprises. In addition to a unified storage architecture, GuardianOS® offers highly differentiated data integrity and storage scalability through features such as DynamicRAID®, centralized storage management, and a comprehensive suite of data protection tools.

Our Snap Enterprise Data Replicator (“Snap EDR”) provides multi-directional WAN-optimized replication. Administrators can automatically replicate data between SnapServer®, Windows, and Linux systems for data distribution, data consolidation, and disaster recovery.

During 2017, we announced the availability of our SnapServer® Hybrid and All Flash Array solutions, which is designed to allow information technology departments to modernize their data center, as well as provide the small and medium businesses (“SMBs”) access to the reliability, security, and performance of flash. In addition, we launched our SnapServer® solutions pre-configured and optimized to work with IP video surveillance cameras and create a new standard for simplicity and integration between IP networked video surveillance systems and data storage.

Tape Automation Systems

NEO® Tape-Based Backup and Long-Term Archive Solutions

Our NEO Series® Tape Libraries, Tape Autoloaders, stand-alone tape drives and linear tape file system (“LTFS”) solutions are designed for both SMBs looking for simple, cost-effective long-term data protection, as well as for complex enterprises faced with the demands of “big data” storage applications. Regardless of the size or type of environment, information technology managers continue to recognize the efficiency and value tape-based solutions provide for long-term data storage.

- NEO® XL-Series tape libraries are designed for mid-range and enterprise businesses, providing automated backup and archive that combines flexibility, density, high-performance and affordability to ensure that data is protected faster and more cost effectively. NEO® XL-Series tape libraries provide data storage capacity that ranges from 90 TB to 16.8 petabytes (“PB”), enabling customers to expand their storage capability as their storage requirements changes. NEO® XL-Series significantly reduces backup windows and improves efficiency with high-performance data transfer rates that range from 504 GB per hour to over 114 TB per hour. The NEOxl 80 supports up to 80 cartridges and six tape drives per module. Up to six 80-cartridge NEOxl Expansion Modules can be added to provide a total of 560 cartridges and 42 tape drives. In November 2017, we announced the addition of the NEOxl 8000. NEOxl is a full-rack configuration delivering access to 560 cartridges slots. The NEOxl 8000 will support as many as 42 tape drives and is available in fibre channel (“FC”) configurations offering features such as redundant data path and redundant control path. NEOxl 8000 is designed to be our next-generation solution for enterprise customers requiring large amounts of data storage with high data availability.

- NEO® S-Series libraries provide affordable tape backup and archive for small and medium businesses. NEO® S-Series libraries are available in compact rack-mount configurations with either SAS or FC connectivity. The NEOs StorageLoader is a 1U, eight-cartridge, single-drive autoloader that provides up to 240 TB of storage capacity. The NEOs T24 is a 2U tape library that supports up to 24 cartridge slots and two tape drives, and delivers up to 720 TB of storage capacity. The NEOs T48 is a 4U tape library that supports up to 48 cartridge slots and four tape drives, with a maximum storage capacity of 1.4 PB.
- NEO® 8000e is a 42U tape library that supports up to 500 cartridge slots (up to 7.5 PB) and 12 tape drives (up to 32.4 TB per hour) in a single module. For truly enterprise-class storage requirements, the NEO® 8000e is scalable up to 1,000 cartridge slots (15 PB) and 24 tape drives (64 TB per hour).
- NEO® Agility provides our customers the ability to manage, share and protect data utilizing LTFS technology on premise, in the cloud or a hybrid cloud environment. Providing archiving capability, and serving as a complement to our NEO® Series tape libraries, NEO® Agility allows users to capitalize on the reliability and portability of tape-based storage while benefiting from data access associated with disk-based storage. NEO® Agility consists of a 1U server platform with our LTFS archiving software. While NEO® Agility is optimized for, and compatible with, NEOs T48, NEOxl 80 and NEO® 8000e tape libraries, it is also compatible with tape libraries manufactured by other vendors. In May 2017, we announced the addition of the NEO® Agility 24. NEO® Agility 24 was added to the portfolio as a solution designed for budget-conscious IT environments requiring smaller storage capacity and slightly lower performance, but still needing the ease of data access associated with the NEO® Agility LTFS technology.

Tape Drives and Media

In addition to our tape automation and LTFS solutions, we provide stand-alone LTO tape drives and LTO media products.

- Stand-alone LTO tape drives provide low-cost, compact affordable backup and archive abilities. Available either as internal drives to be integrated into server-based bundles or as eternal drives for desktop use, stand-alone tape drives deliver storage capacities ranging from 1.5 TB (LTO-5) to 15 TB (LTO-7). In November 2017, we added LTO-8 (12TB) stand-alone tape drives to our portfolio. NEO® tape libraries utilizing the LTO-8 technology can store anywhere from 96 TB to 16.8 PB of data.
- LTO media (data cartridges and cleaning cartridges) allows our customers to purchase the media for their tape drives and libraries at the same time they purchase their NEO Series® solution, providing the ability to have their NEO Series® solution fully operational upon installation. With four generations of LTO tape media (LTO-4, LTO-5, LTO-6, and LTO-7) in our portfolio, native capacities range from 800 GB per cartridge to six TB per cartridge. In November 2017, we announced both standard LTO-8 media and LTO-8M media. LTO-8 data cartridges provide 12 TB of storage capacity on each cartridge. The LTO-8 cartridges should be used in the LTO-8 tape drives to achieve the full 12 TB per cartridge capacity. The LTO-8M provides up to nine TB per cartridge when used in an LTO-8 tape drive with a special media format and library firmware, both of which are available with NEO Series® tape libraries.

Service

Customer service and support are key elements of our strategy and critical components of our commitment in making enterprise-class support and services available to companies of all sizes. Our technical support staff is trained to assist our customers with deployment and compatibility for any combination of virtual desktop infrastructures, hardware platforms, operating systems and backup, data interchange and storage management software. Our application engineers are trained to assist with more complex customer issues. We maintain global toll-free service and support phone lines. Additionally, we also provide self-service and support through our website support portal and email.

Our service offerings provide for on-site service and installation options, round-the-clock phone access to solution experts, and proof of concept and architectural design offerings. We are able to provide comprehensive technical assistance on a global scale.

Production

A significant number of our components and finished products are manufactured or assembled, in whole or in part, by a limited number of third parties. For certain products, we control the design process internally and then outsource the manufacturing and assembly in order to achieve lower production costs. For certain RDX® product and SnapServer® products, we perform product assembly, integration and testing at our manufacturing facilities in Guangzhou, China.

We purchase disk drives, tape drives, chassis, printed circuit boards, integrated circuits, and other major components from outside suppliers. We carefully select suppliers based on their ability to provide quality parts and components which meet technical specifications and volume requirements. We actively monitor these suppliers but we are subject to substantial risks associated with the performance of our suppliers. For certain components, we qualify only a single source, which magnifies the risk of shortages and may decrease our ability to negotiate with that supplier. For a more detailed description of risks related to suppliers, see *Item 1A. Risk Factors*.

Sales and Distribution

- ***Distribution channel*** - We have distribution partners in North America and throughout Europe and Asia. We sell through a two-tier distribution model where distributors sell our products to system integrators, VARs or DMRs, who in turn sell to end users. We support these distribution partners through our dedicated field sales force and field engineers. In 2017, no distribution partner accounted for more than 10% of net revenue.
- ***Reseller channel*** - Our worldwide reseller channel includes systems integrators, VARs and DMRs. Our resellers may package our products as part of complete application and desktop virtualization solutions data processing systems or with other storage devices to deliver complete enterprise information technology infrastructure solutions. Our resellers also recommend our products as replacement solutions when systems are upgraded, or bundle our products with storage management software specific to the end user's system. We support the reseller channel through our dedicated field sales representatives, field engineers and technical support organizations.
- ***Cloud Marketplace*** - Since 2015, we have utilized the Microsoft Azure Cloud Marketplace as an additional channel for our cloud solutions to sell to end-users directly. With the pay-per-use model, supported through the Microsoft Azure Cloud, our customers now can accelerate their adoption of cloud based application and data delivery.

Patents and Proprietary Rights

We rely on a combination of patents, trademarks, trade secret and copyright laws, as well as contractual restrictions, to protect the proprietary aspects of our products and services. Although every effort is made to protect Sphere 3D's intellectual property, these legal protections may only afford limited protection.

We may continue to file for patents regarding various aspects of our products, services and delivery method at a later date depending on the costs and timing associated with such filings. We may make investments to further strengthen our copyright protection going forward, although no assurances can be given that it will be successful in such patent and trademark protection endeavors. We seek to limit disclosure of our intellectual property by requiring employees, consultants, and partners with access to our proprietary information to execute confidentiality agreements and non-competition agreements (when applicable) and by restricting access to our proprietary information. Due to rapid technological change, we believe that establishing and maintaining an industry and technology advantage in factors such as the expertise and technological and creative skills of our personnel, as well as new services and enhancements to our existing services, are more important to our company's business and profitability than other available legal protections.

Despite our efforts to protect our proprietary rights, unauthorized parties may attempt to copy aspects of our services or to obtain and use information that we regard as proprietary. The laws of many countries do not protect proprietary rights to the same extent as the laws of the U.S. or Canada. Litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement. Any such litigation could result in substantial costs and diversion of resources and could have a material adverse effect on our business, operating results and financial condition. There can be no assurance that our means of protecting our proprietary rights will be adequate or that our competitors will not independently develop similar services or products. Any failure by us to adequately protect our intellectual property could have a material adverse effect on our business, operating results and financial condition. See *Item 1A. Risk Factors* under the section *Risks Related to Intellectual Property.*

Competitive Conditions

We believe that our products are unique and innovative and afford us various advantages in the market place; however, the market for information technology is highly competitive. Competitors vary in size from small start-ups to large multi-national corporations which may have substantially greater financial, research and development, and marketing resources. Competitive factors in these markets include performance, functionality, scalability, availability, interoperability, connectivity, time to market enhancements, and total cost of ownership. Barriers to entry vary from low, such as those in traditional disk-based backup products, to high, in tape automation and virtualization software. The markets for all of our products are characterized by price competition and as such we may face price pressure for our products. For a more detailed description of competitive and other risks related to our business, see *Item 1A. Risk Factors*.

Employees

The Company had 388 employees at December 31, 2017. The Company’s employees in Germany and China are covered by labor unions, and the Company believes its relationships with the unions representing these employees are good.

1A. Risk Factors

An investment in our Company involves a high degree of risk. Each of the following risk factors in evaluating our business and prospects as well as an investment in our Company should be carefully considered. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impair our business operations. If any of the following risks occur, our business and financial results could be harmed and the trading price of our common shares could decline.

Risks Related to the Share Purchase Agreement

Our agreement to sell Overland is subject to a number of conditions, some of which are outside of our control. If such conditions are not timely met, such sale may not occur, which would cause us to need immediate funding to pay our existing debt and other obligations and to continue our operations.

On February 20, 2018, we, Overland, and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, our Chief Executive Officer and Chairman of the Board of Directors (the “Purchaser”) entered into a share purchase agreement (the “Purchase Agreement”), under which, subject to the terms and conditions of the Purchase Agreement, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million, subject to a working capital adjustment (the “Share Purchase”). The consummation of the Share Purchase is subject to certain customary conditions. A number of the conditions are not within the control of us, Overland, or Purchaser, and it is possible that such conditions may prevent, delay or otherwise materially adversely affect the completion of the Share Purchase. These conditions include, among others (i) the adoption of the Purchase Agreement by the affirmative vote of the holders of (a) at least 66 2/3% of the outstanding common shares of the Company cast in person or by proxy at the special meeting of shareholders and (b) a majority of the votes cast by certain “minority shareholders” in person or by proxy at the special meeting of shareholders, (ii) the Purchaser’s securing of adequate financing to fund the purchase price, (iii) the transfer by the Company of (a) the businesses of (x) Unified ConneXions, Inc. and (y) HVE ConneXions, LLC (including the provision of information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions), and (b) the SNAP network attached storage business to a subsidiary of the Company other than Overland or a subsidiary of Overland, and (iv) other customary closing conditions, including (among others) (a) the accuracy of each party’s representation and warrants, (b) each party’s performance in all material respects with its obligations under the Purchase Agreement, and (c) the absence of a material adverse effect on the Company (as defined in the Purchase Agreement).The Company cannot predict with certainty, whether and when any of the required closing conditions will be satisfied or if another uncertainty may arise. Currently, the Company’s special meeting of shareholders for the adoption of the Share Purchase is expected to be held in April 2018, which is after the maturity date of our credit facility and convertible note. If the Share Purchase does not receive, or timely receive, the shareholder approval, or if another event occurs that delays or prevents the Share Purchase, such delay or failure to complete the Share Purchase may cause uncertainty or other negative consequences that may materially and adversely affect the Company’s business, financial condition and results of operations and, to the extent that the current price of the Company’s common stock reflects an assumption that the Share Purchase will be completed, the price per share for the Company’s common stock.

The purchase price to be received pursuant to the Purchase Agreement may be insufficient for the Company to pay off its outstanding obligations.

The purchase price to be received pursuant to the Purchase Agreement may be insufficient to pay off all of the amounts owed by the Company under its Credit Agreement with Opus Bank, its outstanding obligations under the $24.5 million convertible note with FBC Holdings, the $2.0 million of indebtedness in connection with that certain subordinated promissory note, issued by Overland to MF Ventures, LLC, and the other liabilities and transaction expenses. It is possible that the net proceeds will not be sufficient to pay all of the above debts, liabilities and expenses or that there will be enough cash or working capital in the Company to fund its continuing operations. Accordingly, the Company may need to raise additional capital through debt or equity financings before, at or around the time of the closing of the Share Purchase.

If we fail to complete the Share Purchase, we will be required to seek financing to pay off our existing secured debt, satisfy our other liabilities, pay our transaction expenses and continue our operations as a going concern.

If we do not complete the Share Purchase, we will continue to face challenges and uncertainties in our ability to repay the outstanding obligations due under the Credit Agreement with Opus Bank and the outstanding obligations under the $24.5 million convertible note with FBC Holdings, which are both scheduled to mature March 31, 2018. As discussed above, it is possible that the net proceeds will not be sufficient to pay all of the above debts, liabilities and expenses or that there will be enough cash or working capital in the Company to fund its continuing operations. Accordingly, the Company may need to raise additional capital through debt or equity financings before, at or around the time of the closing of the Share Purchase, failing which the Company may not be able to continue to operate as a going concern.

Further, if the Share Purchase is not consummated, our directors, executive officers and other employees will have expended extensive time and effort and will have experienced significant distractions from their work during the period the transaction was pending and we will have incurred significant third party transaction costs, in each case, without any commensurate benefit, which may have a material and adverse effect on our common share price and results of operations.

The Share Purchase may not be completed or may be delayed if the conditions to the closing are not satisfied or waived.

The Share Purchase may not be completed or may be delayed because the conditions to the closing set forth in the Purchase Agreement, including approval of the transaction by our shareholders and the absence of a material adverse effect before the closing, may not be satisfied or waived. If the Share Purchase is not completed, we may have difficulty recouping the costs incurred in connection with negotiating the Share Purchase, our relationships with our customers, suppliers and employees may be damaged and our business may be harmed.

Purchaser may not obtain the Financing.

The Purchaser's obligation to consummate and effect the transactions contemplated under the Purchase Agreement, including the Share Purchase, is conditioned, among others, on using its best efforts to arrange for the Financing. There is a risk that the Financing may not be available and the Share Purchase will not be completed.

If we fail to complete the Share Purchase, our business may be harmed.

As a result of our announcement of the Share Purchase, third parties may be unwilling to enter into material agreements with respect to Overland. New or existing customers and business partners of Overland may prefer to enter into agreements with our competitors who have not expressed an intention to sell their business because customers and business partners may perceive that such new relationships are likely to be more stable. If we fail to complete the Share Purchase, the failure to maintain existing business relationships or enter into new ones could adversely affect our business, results of operations and financial condition. If we fail to complete the Share Purchase, we will also retain and continue to operate Overland. The resultant potential for loss or disaffection of employees or customers could have a material, negative impact on the value of the shares of Overland.

Whether we complete the Share Purchase or not, we may not have sufficient working capital and may need to seek additional financing.

Whether we complete the Share Purchase or not, we may not have sufficient working capital to continue to operate the Company and as a result, may need to obtain financing to fund the working capital of the Company. If we fail to obtain any such required financing, we may incur difficulties in continuing to operate our business.

Our business may be harmed if the Share Purchase disrupts the operations of our business and prevents us from realizing intended benefits.

The Share Purchase may disrupt our business and prevent us from realizing intended benefits as a result of a number of obstacles, such as:

- liquidity constraints;
- loss of key employees;
- failure to adjust or implement our business model;
- additional expenditures required to facilitate the Share Purchase; and
- the diversion of management's attention from our day-to-day business.

Failure to complete the Share Purchase may cause the market price for the Company's common shares to decline.

If our shareholders fail to approve the Share Purchase, or if the Share Purchase is not completed for any other reason, the market price of the Company's common shares of the Company may decline due to various potential consequences, including:

- we may not be able to sell the shares of Overland to another party on terms as favorable to us as the terms of the Purchase Agreement;
- the failure to complete the Share Purchase may create substantial doubt as to our ability to effectively implement our current business strategies; and
- our costs related to the Share Purchase, such as legal and accounting fees, must be paid even if the Share Purchase is not completed.

Following the completion of the Share Purchase, although we do not believe there is a reasonable likelihood of such an effect, we may fail to satisfy the continued listing standards of NASDAQ Capital Market and may have to delist our common shares.

Even though we currently satisfy the continued listing standards for The NASDAQ Capital Market and although we do not believe there is a reasonable likelihood of such an effect, following the completion of the Share Purchase, we may fail to satisfy the continued listing standards of The NASDAQ Capital Market. In the event that we are unable to satisfy the continued listing standards of the NASDAQ Capital Market, our common shares may be delisted from that market. Any delisting of our common shares from the NASDAQ Capital Market could adversely affect:

- our ability to attract new investors;
- decrease the liquidity of our outstanding common shares;
- reduce our flexibility to raise additional capital;
- reduce the price at which our common shares trade; and
- increase the transaction costs inherent in trading such common shares with overall negative effects for our shareholders.

In addition, delisting of our common shares could deter broker-dealers from making a market in or otherwise seeking or generating interest in our common shares, and might deter certain institutions and persons from investing in our securities at all. For these reasons and others, delisting could adversely affect the price of our common shares and our business, financial condition and results of operations.

We will continue to incur the expenses of complying with public company reporting requirements following the closing.

After the Share Purchase, we will continue to be required to comply with the applicable reporting requirements of the Exchange Act and applicable Canadian securities laws even though compliance with such reporting requirements is economically burdensome.

If the Share Purchase is not completed, we may explore other potential transactions, but the alternatives may be less favorable to us and there can be no assurance that we will be able to complete an alternative transaction.

If the Share Purchase is not completed, we may explore other potential transactions, including a sale of the shares of Overland to another party on such terms as the Board may approve. The terms of an alternative transaction may be less favorable to us than the terms of the Share Purchase, and there can be no assurance that we will be able to reach agreement with or complete an alternative transaction with another party.

By completing the Share Purchase, we will no longer be engaged in the data protection and archive business.

Overland accounted for approximately 90% of our revenue from continuing operations for the fiscal year ended December 31, 2017. By selling all of the shares of Overland to Purchaser, we will be exiting the data protection and archive business. Upon completion of the Share Purchase, the Company will continue to sell its converged and hyper-converged infrastructure products and professional services under its HVE brand, as well as its proprietary virtualization and container software. The Company will focus its efforts on growing its business within the integrated systems marketplace and continue to offer its products through a global network of distributors and resellers, as well as direct to customers within certain key accounts.

Risks Related to our Business

Our Opus Bank debt facilities mature on the earlier of the maturity date in the 8% Senior Secured Convertible Debenture ("Convertible Note"), dated December 1, 2014, issued to FBC Holdings, or March 31, 2018, and our Convertible Note with FBC Holdings matures on March 31, 2018. If we are unable to refinance or amend our debt and credit facilities before their maturity date, we may be forced to liquidate assets and/or curtail or cease operations.

We have obtained external funding for our business through a credit agreement with Opus Bank. Pursuant to the terms of Amendment Number Seven, the debt facilities mature on the earliest of (a) the maturity date in the Convertible Note, (b) March 31, 2018 or (c) such earlier date upon which the obligations may be accelerated in accordance with terms of the credit agreement. We will need to raise additional funds and/or amend or refinance our credit facility in order to satisfy our obligations under our credit agreement with Opus Bank. In addition, upon the occurrence of certain events of default under our current credit facility, including failure to meet certain monthly revenue and EBITDA targets, our lender may elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. A default under the agreement could result in default and cross-acceleration under other indebtedness. In February 2018, the Company entered into a Purchase Agreement. If the transactions contemplated by the Purchase Agreement are consummated, the Company expects that the proceeds to be received by the Company would be sufficient to pay off its outstanding debt and credit facilities. The Company anticipates to hold a special shareholder meeting in April 2018 to seek shareholder approval for the Share Purchase and, subject to the receipt of requisite shareholder approval, anticipates the transaction will close shortly thereafter. There can be no guarantee that we will be able to raise additional funds or amend or refinance our debt and credit facilities on favorable terms or at all, nor can there be any guarantee that the Company's shareholders will approve the Share Purchase.

If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on the Company's business, results of operations, financial position and liquidity.

Our cash and other sources of liquidity will not be sufficient to fund our operations beyond March 31, 2018. If we raise additional funding through sales of equity or equity-based securities, your shares will be diluted. If we need additional funding for operations and we are unable to raise it, we may be forced to liquidate assets and/or curtail or cease operations.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond March 31, 2018 if the Company is unable to amend, refinance, or pay off its debt and credit facilities. In February 2018, the Company entered into a Purchase Agreement. If the transactions contemplated by the Purchase Agreement are consummated, the Company expects that the proceeds to be received by the Company would be sufficient to pay off its outstanding debt and credit facilities. The Company anticipates to hold a special shareholder meeting in April 2018 to seek shareholder approval for the Share Purchase and, subject to the receipt of requisite shareholder approval, anticipates the transaction will close shortly thereafter. There can be no guarantee that we will be able to raise additional funds or amend or refinance our debt and credit facilities on favorable terms or at all, nor can there be any guarantee that the Company's shareholders will approve the Share Purchase. Significant changes from the Company's current forecasts, including but not limited to: (i) failure to comply with the financial covenants in its credit facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company's ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on the Company's business, results of operations, financial position and liquidity.

If we raise additional funds by selling additional shares of our capital stock, or securities convertible into shares of our capital stock, the ownership interest of our existing shareholders will be diluted. The amount of dilution could be increased by the issuance of warrants or securities with other dilutive characteristics, such as anti-dilution clauses or price resets.

We urge you to review the additional information about our liquidity and capital resources in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this report. If our business ceases to continue as a going concern due to lack of available capital or otherwise, it could have a material adverse effect on our business, results of operations, financial position, and liquidity.

We may not be successful in raising additional capital necessary to meet expected increases in working capital needs. If we need additional funding for operations and we are unable to raise it, we may not be able to continue our business operations.

We expect our working capital needs to increase in the future as we continue to expand and enhance our operations. Our ability to raise additional funds through equity or debt financings or other sources will depend on the financial success of our current business and successful implementation of our key strategic initiatives, financial, economic and market conditions and other factors, some of which are beyond our control. No assurance can be given that we will be successful in raising the required capital at reasonable cost and at the required times, or at all. Further equity financings may have a dilutive effect on shareholders and any debt financing, if available, may require restrictions to be placed on our future financing and operating activities. If we require additional capital and are unsuccessful in raising that capital, we may not be able to continue our business operations and advance our growth initiatives, which could adversely impact our business, financial condition and results of operations.

The terms of our March 2017 private placements may materially and adversely impact our ability to obtain additional financing in the future.

We are subject to certain restrictions and obligations in connection with our private placement of warrants that was consummated in March 2017 which may materially and adversely affect our ability to obtain additional financing in the future including participation rights whereby certain investors are entitled to purchase up to 50% in the aggregate of the securities sold in any subsequent issuance for 15 months following the closing of the private placement.

We have in the past failed to comply with financial covenants and other provisions in certain of our loan documents, which has resulted in defaults under certain of our loan documents, and we could be deemed to be in default under other indebtedness and agreements. These and similar defaults in the future could adversely affect our financial condition and our ability to meet our payment obligations on our indebtedness.

We have in the past defaulted under financial and other covenants under our Opus Bank credit agreement and under our previous loan documents, which have been waived by our lenders. In the past, these defaults generally have related to maintenance of required minimum asset coverage ratios. Upon the occurrence of certain events of default under our current credit facility, including failure to meet certain trailing twelve-month revenue and EBITDA targets, our lender may elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. While our ongoing defaults have been waived, our lender may not in the future waive such defaults. In addition, as a result of such defaults, we could be deemed to be in default under other of our indebtedness and agreements.

In the event of the acceleration of our indebtedness or if we are unable to otherwise maintain compliance with covenants set forth in these arrangements, including our Opus Bank credit agreement and Convertible Note or if these arrangements are otherwise terminated for any reason, management may be forced to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

We have granted security interests over certain of our assets in connection with various debt arrangements.

We have granted security interests over certain of our assets in connection with our credit facility and other indebtedness, and we may grant additional security interests to secure future borrowings. If we are unable to satisfy our obligations under these arrangements, we could be forced to sell certain assets that secure these loans, which could have a material adverse effect on our ability to operate our business. In the event we are unable to maintain compliance with covenants set forth in these arrangements or if these arrangements are otherwise terminated for any reason, it could have a material adverse effect on our ability to access the level of funding necessary to continue operations at current levels. If any of these events occur, management may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

We face a selling cycle of variable length to secure new purchase agreements for our products and services, and design wins may not result in purchase orders or new customer relationships.

We face a selling cycle of variable lengths to secure new purchase agreements. Even if we succeed in developing a relationship with a potential new customer and/or obtaining design wins, we may not be successful in securing new sales for our products or services, or new customers. In addition, we cannot accurately predict the timing of entering into purchase agreements with new customers due to the complex purchase decision processes of some large institutional customers, such as healthcare providers or school districts, which often involve high-level management or board approvals. Consequently, we have only a limited ability to predict the timing of specific new customer relationships.

We have a limited operating history and a history of net losses. We may not achieve or maintain profitability.

Sphere 3D has only recently moved from being a development stage company to commercial operations. As such, we have a limited operating history and limited non-recurring revenues derived from operations. Significant expenditures have been focused on research and development to create the Glassware 2.0™ ("Glassware") product offering. Sphere 3D's near-term focus has been in actively developing reference accounts and building sales, marketing and support capabilities. Overland, which we acquired in December 2014, also has a history of net losses since fiscal 2006. We expect to continue to incur net losses and we may not achieve or maintain profitability. We may see continued losses during 2018 and as a result of these and other factors, we may not be able to achieve, sustain or increase profitability in the near future.

Even after the Overland acquisition, Sphere 3D is subject to many risks common to early-stage enterprises, including under-capitalization, cash shortages, limitations with respect to personnel, financial, and other resources, technology, and market acceptance issues. There is no assurance that we will be successful in achieving a return on shareholders' investment and the likelihood of success must be considered considering our stage of operations.

Our plans for growth will place significant demands upon our resources. If we are unsuccessful in achieving our plan for growth, our business could be harmed.

We are actively pursuing a plan to market our products domestically and internationally, with our principal international market being Europe. The plan will place significant demands upon managerial, financial, and human resources. Our ability to manage future growth will depend in large part upon several factors, including our ability to rapidly:

- build or leverage, as applicable, a network of channel partners to create an expanding presence in the evolving marketplace for our products and services;
- build or leverage, as applicable, a sales team to keep end-users and channel partners informed regarding the technical features, issues and key selling points of our products and services;
- attract and retain qualified technical personnel in order to continue to develop reliable and flexible products and provide services that respond to evolving customer needs;
- develop support capacity for end-users as sales increase, so that we can provide post-sales support without diverting resources from product development efforts; and
- expand our internal management and financial controls significantly, so that we can maintain control over our operations and provide support to other functional areas as the number of personnel and size increases.

Our inability to achieve any of these objectives could harm our business, financial condition and results of operations.

Our market is competitive and dynamic. New competing products and services could be introduced at any time that could result in reduced profit margins and loss of market share.

The technology industry is very dynamic, with new technology and services being introduced by a range of players, from larger established companies to start-ups, on a frequent basis. Our competitors may announce new products, services, or enhancements that better meet the needs of end-users or changing industry standards. Further, new competitors or alliances among competitors could emerge. Increased competition may cause price reductions, reduced gross margins and loss of market share, any of which could have a material adverse effect on our business, financial condition and results of operations.

Furthermore, the worldwide storage market is intensely competitive. A number of manufacturers of tape-based and disk-based storage solutions compete for a limited number of customers. Barriers to entry are relatively low in these markets, and some of our competitors in this market have substantially greater financial and other resources, larger research and development staffs, and more experience and capabilities in manufacturing, marketing and distributing products. Ongoing pricing pressure could result in significant price erosion, reduced profit margins and loss of market share, any of which could have a material adverse effect on our business, results of operations, financial position and liquidity.

Our success depends on our ability to anticipate technological changes and develop new and enhanced products.

The markets for our products are characterized by rapidly changing technology, evolving industry standards and increasingly sophisticated customer requirements. The introduction of products embodying new technology and the emergence of new industry standards can negatively impact the marketability of our existing products and can exert price pressures on existing products. It is critical to our success that we are able to anticipate and react quickly to changes in technology or in industry standards and to successfully develop, introduce, manufacture and achieve market acceptance of new, enhanced and competitive products on a timely basis and cost-effective basis. We invest substantial resources towards continued innovation; however, there can be no assurance that we will successfully develop new products or enhance and improve our existing products, that new products and enhanced and improved existing products will achieve market acceptance or that the introduction of new products or enhanced existing products by others will not negatively impact us. Our inability to develop products that are competitive in technology and price and that meet end-user needs could have a material adverse effect on our business, financial condition or results of operations.

Development schedules for technology products are inherently uncertain. We may not meet our product development schedules, and development costs could exceed budgeted amounts. Our business, results of operations, financial position and liquidity may be materially and adversely affected if the products or product enhancements that we develop are delayed or not delivered due to developmental problems, quality issues or component shortage problems, or if our products or product enhancements do not achieve market acceptance or are unreliable. We or our competitors will continue to introduce products embodying new technologies, such as new sequential or random access mass storage devices. In addition, new industry standards may emerge. Such events could render our existing products obsolete or not marketable, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

Our business is dependent on the continued market acceptance and usage of disk and tape-based solutions. The impact of recent storage technology trends on our business is uncertain.

The industry in which we operate has experienced significant historical growth due to the continuing increase in the demand for storage by consumers, enterprises and government bodies around the world. While information technology spending has fluctuated periodically due to technology transitions and changing economic and business environments, overall growth in demand for storage has continued. Recent technology trends, such as the emergence of hosted storage, software as a service and mobile data access are driving significant changes in storage architectures and solution requirements. The impact of these trends on overall long-term growth patterns is uncertain. Nevertheless, if the general level of historic industry growth, or if the growth of the specific markets in which we compete, were to decline, our business and results of operations could suffer.

As a result of the acquisition of Overland, we expect to continue to derive a portion of our revenue from products that use magnetic tape drives for backup and recovery of digital data. Our tape-based storage solutions now compete directly with other storage technologies, such as hard disk drives, and may face competition in the future from other emerging technologies. The prices of hard disk drives continue to decrease as their capacity and performance increase. We expect our tape-based products to face increased competition from these alternative technologies and come under increasing pricing pressure. If our strategy to compete in disk-based markets does not succeed, it could have a material adverse effect on our business, results of operations, financial position and liquidity.

Our management team continually reviews and evaluates our product portfolio, operating structure, and markets to assess the future viability of our existing products and market positions. We may determine that the infrastructure and expenses necessary to sustain an existing product offering are greater than the potential contribution margin that we would realize. As a result, we may determine that it is in our best interest to exit or divest one or more existing product offerings, which could result in costs incurred for exit or disposal activities and/or impairments of long-lived assets. Moreover, if we do not identify other opportunities to replace discontinued products or operations, our revenues would decline, which could lead to further net losses and adversely impact the market price of our common shares.

In addition, we could incur charges for excess and obsolete inventory. The value of our inventory may be adversely affected by factors that affect our ability to sell the products in our inventory. Such factors include changes in technology, introductions of new products by us or our competitors, the current or future economic downturns, or other actions by our competitors. If we do not effectively forecast and manage our inventory, we may need to write off inventory as excess or obsolete, which adversely affects cost of sales and gross profit. Our business has previously experienced, and we may in the future experience, reductions in sales of older generation products as customers delay or defer purchases in anticipation of new products that we or our competitors may introduce. We have established reserves for slow moving or obsolete inventory. These reserves, however, may prove to be inadequate, which would result in additional charges for excess or obsolete inventory.

Our products may contain defects in components or design, and our warranty reserves may not adequately cover our warranty obligations for these products.

Although we employ a vigorous testing and quality assurance program, our products may contain defects or errors, particularly when first introduced or as new versions are released. We may not discover such defects or errors until after a solution has been released to a customer and used by the customer and end-users. Defects and errors in our products could materially and adversely affect our reputation, result in significant costs, delay planned release dates and impair our ability to sell our products in the future. The costs incurred in correcting any solution defects or errors may be substantial and could adversely affect our operating margins. While we plan to continually test our products for defects and errors and work with end-users through our post-sales support services to identify and correct defects and errors, defects or errors in our products may be found in the future.

We have also established reserves for the estimated liability associated with product warranties. However, we could experience unforeseen circumstances where these or future reserves may not adequately cover our warranty obligations. For example, the failure or inadequate performance of product components that we purchase could increase our warranty obligations beyond these reserves.

The failure to attract, hire, retain and motivate key personnel could have a significant adverse impact on our operations.

Our success depends on the retention and maintenance of key personnel, including members of senior management and our technical, sales and marketing teams. Achieving this objective may be difficult due to many factors, including competition for such highly skilled personnel; fluctuations in global economic and industry conditions; changes in our management or leadership; competitors' hiring practices; and the effectiveness of our compensation programs. The loss of any of these key persons could have a material adverse effect on our business, financial condition or results of operations. Additionally, prior to our acquisition of Overland, Overland experienced a prolonged period of operating losses and declines in its cash position, which affected Overland's employee morale and retention and may continue to affect the morale and retention of our employees. Our success is also dependent on our continuing ability to identify, hire, train, motivate and retain highly qualified management, technical, sales and marketing personnel. Any such new hire may require a significant transition period prior to making a meaningful contribution. Competition for qualified employees is particularly intense in the technology industry, and we have in the past experienced difficulty recruiting qualified employees. Our failure to attract and to retain the necessary qualified personnel could seriously harm our operating results and financial condition. Competition for such personnel can be intense, and no assurance can be provided that we will be able to attract or retain highly qualified technical and managerial personnel in the future, which may have a material adverse effect on our future growth and profitability. We do not have key man insurance.

Our financial results may fluctuate substantially for many reasons, and past results should not be relied on as indications of future performance.

Our revenues and operating results may fluctuate from quarter to quarter and from year to year due to a combination of factors, including, but not limited to:

- varying size, timing and contractual terms of orders for our products, which may delay the recognition of revenue;
- competitive conditions in the industry, including strategic initiatives by us or our competitors, new products or services, product or service announcements and changes in pricing policy by us or our competitors;
- market acceptance of our products and services;
- our ability to maintain existing relationships and to create new relationships with channel partners;
- the discretionary nature of purchase and budget cycles of our customers and end-users;
- the length and variability of the sales cycles for our products;
- general weakening of the economy resulting in a decrease in the overall demand for our products and services or otherwise affecting the capital investment levels of businesses with respect to our products or services;
- timing of product development and new product initiatives.
- changes in customer mix;
- increases in the cost of, or limitations on, the availability of materials;
- fluctuations in average selling prices;
- changes in product mix;
- increases in costs and expenses associated with the introduction of new products; and
- currency exchange fluctuations.

Further, the markets that we serve are volatile and subject to market shifts that we may be unable to anticipate. A slowdown in the demand for workstations, mid-range computer systems, networks and servers could have a significant adverse effect on the demand for our products in any given period. In the past, we have experienced delays in the receipt of purchase orders and, on occasion, anticipated purchase orders have been rescheduled or have not materialized due to changes in customer requirements. Our customers may cancel or delay purchase orders for a variety of reasons, including, but not limited to, the rescheduling of new product introductions, changes in our customers’ inventory practices or forecasted demand, general economic conditions affecting our customers’ markets, changes in our pricing or the pricing of our competitors, new product announcements by us or others, quality or reliability problems related to our products, or selection of competitive products as alternate sources of supply. In particular, our ability to forecast sales to distributors, VARs and DMRs is especially limited because these customers typically provide us with relatively short order lead times or are permitted to change orders on short notice.

Thus, there can be no assurance that we will be able to reach profitability on a quarterly or annual basis. We believe that our revenue and operating results will continue to fluctuate, and that period-to-period comparisons are not necessarily indications of future performance. Our revenue and operating results may fail to meet the expectations of public market analysts or investors, which could have a material adverse effect on the price of our common shares. In addition, portions of our expenses are fixed and difficult to reduce if our revenues do not meet our expectations. These fixed expenses magnify the adverse effect of any revenue shortfall.

Our plans for implementing our business strategy and achieving profitability are based upon the experience, judgment and assumptions of our key management personnel, and available information concerning the communications and technology industries. If management’s assumptions prove to be incorrect, it could have a material adverse effect on our business, financial condition or results of operations.

We are subject to exchange rate risk in connection with our international operations.

A substantial portion of our revenue is earned in U.S. dollars and Euros. Fluctuations in the exchange rate between the U.S. dollar and other currencies, may have a material adverse effect on our business, financial condition and operating results. Further, our sales in international markets are denominated in U.S. dollars as well as local currency. Our wholly-owned subsidiaries in Canada, Europe and Asia incur costs that are denominated in local currencies. As exchange rates vary, these results when translated into U.S. dollars may vary from expectations and adversely impact overall expected results. A weaker U.S. dollar would result in an increase to revenue and expenses upon consolidation, and a stronger U.S. dollar would result in a decrease to revenue and expenses upon consolidation. There can be no assurances that we will prove successful in our effort to manage currency risk, which may adversely impact our operating results.

We rely on indirect sales channels to market and sell our branded products. Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results.

We have relationships with third party resellers, OEMs, system integrators and enterprise application providers that facilitate our ability to sell and implement our products. These business relationships are important to extend the geographic reach and customer penetration of our sales force and ensure that our products are compatible with customer network infrastructures and with third party products. Further, we sell all of our Overland branded products through our network of distributors, VARs, and DMRs, who in turn sell our products to end users.

We believe that our success depends, in part, on our ability to develop and maintain strategic relationships with resellers, independent software vendors, OEMs, system integrators, and enterprise application providers. Should any of these third parties go out of business, or choose not to work with us, we may be forced to increase the development of those capabilities internally, incurring significant expense and adversely affecting operating margins. Any of these third parties may develop relationships with other companies, including those that develop and sell products that compete with ours. We could lose sales opportunities if we fail to work effectively with these parties or they choose not to work with us. Most of our distributors and resellers also carry competing product lines that they may promote over our products. A distributor or reseller might not continue to purchase our products or market them effectively, and each determines the type and amount of our products that it will purchase from us and the pricing of the products that it sells to end user customers. Further, the long-term success of any of our distributors or resellers is difficult to predict, and we have no purchase commitments or long-term orders from any of them to assure us of any baseline sales through these channels.

Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results. Our operating results could also be adversely affected by a number of factors, including, but not limited to:

- a change in competitive strategy that adversely affects a distributor’s or reseller’s willingness or ability to stock and distribute our products;
- the reduction, delay or cancellation of orders or the return of a significant amount of our products;
- the loss of one or more of our distributors or resellers; and
- any financial difficulties of our distributors or resellers that result in their inability to pay amounts owed to us.

If our suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and this could negatively affect our operations.

Some of our products have a large number of components and subassemblies produced by outside suppliers. We depend greatly on these suppliers for items that are essential to the manufacture of our products, including tape drives and printed circuit boards. We work closely with our regional, national and international suppliers, which are carefully selected based on their ability to provide quality parts and components that meet both our technical specifications and volume requirements. For certain items, we qualify only a single source, which magnifies the risk of shortages and decreases our ability to negotiate with that supplier on the basis of price. From time to time, we have in the past been unable to obtain as many drives as have needed due to drive shortages or quality issues from certain of our suppliers. If these suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and negatively affect our operations.

Our international operations are important to our business and involve unique risks related to financial, political, and economic conditions.

We expect sales to customers outside of the U.S. to continue to represent a significant portion of our total sales in the future and we may be subject to additional risks associated with doing business in foreign countries. Our future results could be materially adversely affected by a variety of political, economic or other factors relating to our operations outside the U.S., any or all of which could have a material adverse effect on our operating results and financial condition. In addition to the language barriers, different presentations of financial information, different business practices, and other cultural differences and barriers, ongoing business risks may result from the international political situation, uncertain legal systems and applications of law, prejudice against foreigners, corrupt practices, uncertain economic policies and potential political and economic instability. In doing business in foreign countries we may also be subject to such risks, including, but not limited to, the following:

- cultural and language differences;
- increased costs of doing business in countries with limited infrastructure;
- possible difficulties in collecting accounts receivable;
- corporate and personal liability for violations of local laws;
- the imposition of governmental controls mandating compliance with various foreign and U.S. export laws;
- currency exchange fluctuations;
- weak economic conditions in foreign markets;
- political or social unrest;
- economic instability or weakness in a specific country or region;
- environmental and trade protection measures and other legal and regulatory requirements;
- health or similar issues, such as pandemic or epidemic or natural disasters;
- trade restrictions, tariffs and taxes;
- expropriation;
- longer payment cycles typically associated with international sales; and
- difficulties in staffing and managing international operations.

We also may face competition from local companies which have longer operating histories, greater name recognition, and broader customer relationships and industry alliances in their local markets, and it may be difficult to operate profitably in some markets as a result of such competition. Furthermore, we may be unable to comply with changes in foreign laws, rules and regulations applicable to us in the future, which could have a material adverse effect on our business, results of operations, financial position and liquidity.

We are subject to laws, regulations and similar requirements, changes to which may adversely affect our business and operations.

We are subject to laws, regulations and similar requirements that affect our business and operations, including, but not limited to, the areas of commerce, intellectual property, income and other taxes, labor, environmental, health and safety, and our compliance in these areas may be costly. While we have implemented policies and procedures to comply with laws and regulations, there can be no assurance that our employees, contractors, suppliers or agents will not violate such laws and regulations or our policies. Any such violation or alleged violation could materially and adversely affect our business. Any changes or potential changes to laws, regulations or similar requirements, or our ability to respond to these changes, may significantly increase our costs to maintain compliance or result in our decision to limit our business or products, which could materially harm our business, results of operations and future prospects.

The Dodd-Frank Wall Street Reform and Consumer Protection Act includes provisions regarding certain minerals and metals, known as conflict minerals, mined from the Democratic Republic of Congo and adjoining countries. These provisions require companies to undertake due diligence procedures and report on the use of conflict minerals in its products, including products manufactured by third parties. Compliance with these provisions will cause us to incur costs to certify that our supply chain is conflict free and we may face difficulties if our suppliers are unwilling or unable to verify the source of their materials. Our ability to source these minerals and metals may also be adversely impacted. In addition, our customers may require that we provide them with a certification and our inability to do so may disqualify us as a supplier.

Furthermore, future changes to U.S. tax laws could materially adversely affect Sphere 3D. Under current law, Sphere 3D is expected to be treated as a foreign corporation for U.S. federal income tax purposes. However, changes to the rules in Section 7874 of the Code or the Treasury regulations promulgated thereunder or other guidance issued by the Treasury or the Internal Revenue Service (“IRS”) could adversely affect Sphere 3D’s status as a foreign corporation for U.S. federal income tax purposes, and any such changes could have prospective or retroactive application. On May 20, 2014, Senator Carl Levin and Representative Sander M. Levin introduced the Stop Corporate Inversions Act of 2014 (the “Inversion Bill”) in the Senate and the House of Representatives, respectively. Similar legislation was introduced by Senator Dick Durbin and Representative Sander M. Levin on January 20, 2015 and July 26, 2017. In its current form, the Inversion Bill would treat Sphere 3D as a U.S. corporation if the management and control of the expanded affiliated group which includes Sphere 3D occurs, directly or indirectly, primarily within the U.S. and the expanded affiliated group has significant U.S. business activities. If enacted, the Inversion Bill would apply to taxable years ending after May 8, 2014. Because certain members of Sphere 3D’s senior management team reside in the U.S., and are expected to continue to reside in the U.S., Sphere 3D could be treated as a U.S. corporation if the Inversion Bill becomes law.

We have made a number of acquisitions in the past and we may make acquisitions in the future. Our ability to identify complementary assets, products or businesses for acquisition and successfully integrate them could affect our business, financial condition and operating results.

In the future, we may continue to pursue acquisitions of assets, products or businesses that we believe are complementary to our existing business and/or to enhance our market position or expand our product portfolio. There is a risk that we will not be able to identify suitable acquisition candidates available for sale at reasonable prices, complete any acquisition, or successfully integrate any acquired product or business into our operations. We are likely to face competition for acquisition candidates from other parties including those that have substantially greater available resources. Acquisitions may involve a number of other risks, including:

- diversion of management’s attention;
- disruption to our ongoing business;

- failure to retain key acquired personnel;
- difficulties in integrating acquired operations, technologies, products or personnel;
- unanticipated expenses, events or circumstances;
- assumption of disclosed and undisclosed liabilities; and
- inappropriate valuation of the acquired in-process research and development, or the entire acquired business.

If we do not successfully address these risks or any other problems encountered in connection with an acquisition, the acquisition could have a material adverse effect on our business, results of operations and financial condition. Problems with an acquired business could have a material adverse effect on our performance or our business as a whole. In addition, if we proceed with an acquisition, our available cash may be used to complete the transaction, diminishing our liquidity and capital resources, or shares may be issued which could cause significant dilution to existing shareholders.

We are implementing cost reduction efforts. We may need to implement additional cost reduction efforts, which could materially harm our business.

Since our acquisition of the Overland business, we have been implementing certain cost reduction efforts, which we intend to continue. There can be no assurance that these cost reduction efforts will be successful. As a result, we may need to implement further cost reduction efforts across our operations, such as further reductions in the cost of our workforce and/or suspending or curtailing planned programs, either of which could materially harm our business, results of operations and future prospects.

Risks Related to Intellectual Property

Our ability to compete depends in part on our ability to protect our intellectual property rights.

Our success depends in part on our ability to protect our rights in our intellectual property. We rely on various intellectual property protections, including copyright, trade-mark and trade secret laws and contractual provisions, to preserve our intellectual property rights. We have filed a number of patent applications and have historically protected our intellectual property through trade secrets and copyrights. As our technology is evolving and rapidly changing, current intellectual property rights may not adequately protect us.

Intellectual property rights may not prevent competitors from developing products that are substantially equivalent or superior to our products. Competitors may independently develop similar products, duplicate our products or, if patents are issued to us, design around these patents. To the extent that we have or obtain patents, such patents may not afford meaningful protection for our technology and products. Others may challenge our patents and, as a result, our patents could be narrowed, invalidated or declared unenforceable. The patents that are material to our business began expiring in November 2015. In addition, our current or future patent applications may not result in the issuance of patents in the U.S. or foreign countries.

Although we believe we have a proprietary platform for our technologies and products, we may in the future become subject to claims for infringement of intellectual property rights owned by others. Further, to protect our own intellectual property rights, we may in the future bring claims for infringement against others.

Our commercial success depends, in part, upon not infringing intellectual property rights owned by others. Although we believe that we have a proprietary platform for our technologies and products, we cannot determine with certainty whether any existing third party patents or the issuance of any third party patents would require us to alter our technology, obtain licenses or cease certain activities. We may become subject to claims by third parties that our technology infringes their intellectual property rights. While we provide our customers with a qualified indemnity against the infringement of third party intellectual property rights, we may become subject to these claims either directly or through indemnities against these claims that we routinely provide to our end-users and channel partners.

Further, our customers may use our products in ways that may infringe the intellectual property rights or third parties and/or require a license from third parties. Although our customers are contractually obligated to use our products only in a manner that does not infringe third party intellectual property rights, we cannot guarantee that such third parties will not seek remedies against us for providing products that may enable our customers to infringe the intellectual property rights of others.

In addition, we may receive in the future, claims from third parties asserting infringement, claims based on indemnities provided by us, and other related claims. Litigation may be necessary to determine the scope, enforceability and validity of third party proprietary or other rights, or to establish our proprietary or other rights. Furthermore, despite precautions, it may be possible for third parties to obtain and use our intellectual property without our authorization. Policing unauthorized use of intellectual property is difficult, and some foreign laws do not protect proprietary rights to the same extent as the laws of Canada or the U.S. To protect our intellectual property, we may become involved in litigation. In addition, other companies may initiate similar proceedings against us. The patent position of information technology firms is highly uncertain, involves complex legal and factual questions, and continues to be the subject of much litigation. No consistent policy has emerged from the U.S. Patent and Trademark Office or the courts regarding the breadth of claims allowed or the degree of protection afforded under information technology patents.

Some of our competitors have, or are affiliated with companies having, substantially greater resources than us and these competitors may be able to sustain the costs of complex intellectual property litigation to a greater degree and for a longer period of time than us. Regardless of their merit, any such claims could:

- divert the attention of our management, cause significant delays, materially disrupt the conduct of our business or materially adversely affect our revenue, financial condition and results of operations;
- be time consuming to evaluate and defend;
- result in costly litigation and substantial expenses;
- cause product shipment delays or stoppages;
- subject us to significant liabilities;
- require us to enter into costly royalty or licensing agreements;
- require us to modify or stop using the infringing technology; or
- result in costs or other consequences that have a material adverse effect on our business, results of operations and financial condition.

Risks Related to Our Public Company Status and Our Common Shares

If our common shares are delisted from the NASDAQ Capital Market, our business, financial condition, results of operations and share price could be adversely affected, and the liquidity of our common shares and our ability to obtain financing could be impaired.

We have in the past and may in the future fail to comply with the minimum $1.00 per share closing bid price requirement for continued listing on the NASDAQ Capital Market. After receiving notice of non-compliance from NASDAQ in August 2016, we regained compliance with this requirement in July 2017 by effecting a 1-for-25 reverse stock split on July 11, 2017.

Maintaining the listing of our common shares on the NASDAQ Capital Market requires that we comply with the closing bid price requirement, amongst other certain listing requirements. If our common shares cease to be listed for trading on NASDAQ for any reason, it may harm our share price, increase the volatility of our share price, decrease the level of trading activity and make it more difficult for investors to buy or sell shares of our common shares. Our failure to maintain a listing on NASDAQ may constitute an event of default under our outstanding indebtedness as well as any future indebtedness, which would accelerate the maturity date of such debt or trigger other obligations. In addition, certain institutional investors that are not permitted to own securities of non-listed companies may be required to sell their shares, which would adversely affect the trading price of our common shares. If we are not listed on NASDAQ, we will be limited in our ability to raise additional capital we may need.

Future sales of our securities under certain circumstances may trigger price-protection provisions in outstanding warrants, which would dilute your investment and could result in a decline in the trading price of our common shares.

In connection with our registered direct offering in December 2015, we issued a warrant exercisable to purchase up to 60,000 common shares that contains certain price protection provisions. If we, at any time while these warrants are outstanding, effect certain variable rate transactions and the issue price, conversion price or exercise price per share applicable thereto is less than the exercise price then in effect for the warrants, then the exercise price of the warrants will be reduced to equal such price. In addition, in connection with our private placement offering in March 2017, we issued warrants that contain certain price protection provisions. If at any time while the warrants are outstanding, we sell or grant options to purchase, reprice or otherwise issue any common shares or securities convertible into common shares at a price less than $7.50, then the exercise price for the warrants will be reduced to such price, provided that the exercise price will not be lower than $0.10, and the number of common shares issuable under the warrants will be increased such that, after taking into account the decrease in the exercise price, the aggregate exercise price under the warrants will remain the same. The Company's reverse share consolidation, which became effective on July 11, 2017, did not adjust the minimum exercise price of the warrants. Additionally, in connection with our private placement offering in August 2017, we issued warrants that also contain certain price protection provisions. Until December 31, 2017, if the Company sells or grants options to purchase, reprice or otherwise issue any common shares or securities convertible into common shares at a price less than $5.00, subject to certain exempted issuances, then the exercise price for these warrants will be adjusted to a price that is equal to 105% of such lower price. The triggering of these price protection provisions, together with the exercise of these warrants, could cause additional dilution to our shareholders.

If we fail to maintain compliance with the terms of certain registration rights agreements, we may have to pay liquidated damages to our investors, which will increase our negative cash flows.

Under the terms of our registration rights agreements entered into with certain investors in connection with private placements of our securities in March 2017 and August 2017, if we fail to comply with certain provisions set forth in these agreements, including covenants requiring that we maintain the effectiveness of the registration statements registering these securities, then we will be required to pay liquidated damages to our investors. There can be no assurance that the registration statements will remain effective for the time periods necessary to avoid payment of liquidated damages. If we are required to pay our investors liquidated damages, this could materially harm our business and future prospects.

The market price of our common shares is volatile.

The market price for common shares may be volatile and subject to wide fluctuations in response to numerous factors, many of which are beyond our control, including the following:

- price and volume fluctuations in the overall stock market from time to time;
- volatility in the market prices and trading volumes of technology stocks;
- changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular;
- future capital raising activities;
- sales of common shares by holders thereof or by us;
- failure of securities analysts to maintain coverage of Sphere 3D, changes in financial estimates by securities analysts who follow Sphere 3D, or our failure to meet these estimates or the expectations of investors;
- the financial projections we may provide to the public, any changes in those projections or our failure to meet those projections;
- market acceptance of our products and technologies;
- announcements by us or our competitors of new products or services;

- the public’s reaction to our press releases, other public announcements and filings with the SEC and the applicable Canadian securities regulatory authorities;
- rumors and market speculation involving us or other companies in our industry;
- actual or anticipated changes in our operating results or fluctuations in our operating results;
- actual or anticipated developments in our business, our competitors’ businesses or the competitive landscape generally;
- litigation involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- new laws or regulations or new interpretations of existing laws or regulations applicable to us and our business;
- changes in accounting standards, policies, guidelines, interpretations or principles;
- any significant change in our executive officers and other key personnel or Board of Directors;
- general economic conditions and slow or negative growth of our markets;
- release of transfer restrictions on certain outstanding common shares;
- news reports relating to trends, concerns or competitive developments, regulatory changes and other related issues in our industry or target markets.

Financial markets may experience price and volume fluctuations that affect the market prices of equity securities of companies and that are unrelated to the operating performance, underlying asset values or prospects of such companies. Accordingly, the market price of the common shares may decline even if our operating results, underlying asset values or prospects have not changed. As well, certain institutional investors may base their investment decisions on consideration of our governance and social practices and performance against such institutions’ respective investment guidelines and criteria, and failure to meet such criteria may result in a limited or no investment in our common shares by those institutions, which could adversely affect the trading price of our common shares. There can be no assurance that fluctuations in price and volume will not occur due to these and other factors.

In the past, plaintiffs have often initiated securities class action litigation against a company following periods of volatility in the market price of its securities. We may in the future be a target of similar litigation. Securities litigation could result in substantial costs and liabilities and could divert management’s attention from day-to-day operations and consume resources, such as cash. In addition, the resolution of those matters may require us to issue additional common shares, which could potentially result in dilution to our existing shareholders. Expenses incurred in connection with these matters (which include fees of lawyers and other professional advisors and potential obligations to indemnify officers and directors who may be parties to such actions) could adversely affect our cash position. See Item 18 “Financial Statements”, Note 14 “Commitments and Contingencies”.

We must comply with the financial reporting requirements of a public company, as well as other requirements associated with being listed on NASDAQ.

Sphere 3D is subject to reporting and other obligations under applicable Canadian securities laws, SEC rules and the rules of the NASDAQ Capital Market. These reporting and other obligations, including National Instrument 52-102 - Continuous Disclosure Obligations and National Instrument 52-109 - Certification of Disclosure in Issuers’ Annual and Interim Filings, place significant demands on our management, administrative, operational and accounting resources. Moreover, any failure to maintain effective internal controls could cause us to fail to meet our reporting obligations or result in material misstatements in our consolidated financial statements. If we cannot provide reliable financial reports or prevent fraud, our reputation and operating results could be materially harmed, which could also cause investors to lose confidence in our reported financial information, which could result in a lower trading price of our common shares.

Management does not expect that our disclosure controls and procedures and internal controls over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that its objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Due to the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by individual acts of some persons, by collusion of two or more people or by management override of the controls. Due to the inherent limitations in a cost-effective control system, misstatements due to error, or fraud may occur and not be detected.

Sphere 3D is an “emerging growth company” as defined in the Jumpstart Our Business Startups (“JOBS”) Act, enacted on April 5, 2012, and Sphere 3D will continue to qualify as an “emerging growth company” until the earliest to occur of: (a) the last day of the fiscal year during which Sphere 3D has total annual gross revenues of $1.0 billion or more; (b) the last day of the fiscal year of Sphere 3D following the fifth anniversary of the date of the first sale of common equity securities of Sphere 3D pursuant to an effective registration statement under the Securities Act; (c) the date on which Sphere 3D has, during the previous three-year period, issued more than $1.0 billion in nonconvertible debt; or (d) the date on which Sphere 3D is deemed to be a ‘large accelerated filer’.

For so long as Sphere 3D continues to qualify as an emerging growth company, it will be exempt from the requirement to include an auditor attestation report relating to internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act (“SOA”) in its annual reports filed under the Exchange Act, even if it does not qualify as a “smaller reporting company”. In addition, section 103(a)(3) of the SOA has been amended by the JOBS Act to provide that, among other things, auditors of an emerging growth company are exempt from any rules of the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor’s report in which the auditor would be required to provide additional information about the audit and the financial statements of the registrant (auditor discussion and analysis).

Sphere 3D is and will remain through December 31, 2018, an “emerging growth company” within the meaning under the JOBS Act, and until Sphere 3D ceases to be an emerging growth company Sphere 3D may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the SOA. Investors may find our common shares less attractive because Sphere 3D relies on these exemptions. If some investors find our common shares less attractive as a result, there may be a less active trading market for our common shares and our share price may be more volatile.

We may be treated as a Passive Foreign Investment Company.

There is also an ongoing risk that Sphere 3D may be treated as a Passive Foreign Investment Company, or PFIC, for U.S. federal income tax purposes. A non-U.S. corporation generally will be considered to be a PFIC for any taxable year in which 75% or more of its gross income is passive income, or 50% or more of the average value of its assets are considered “passive assets” (generally, assets that generate passive income). This determination is highly factual, and will depend upon, among other things, Sphere 3D’s market valuation and future financial performance. Sphere 3D believes that it was classified as a PFIC during the tax year ended December 31, 2013. However, based on current business plans and financial expectations, Sphere 3D expects that it will not be a PFIC for its current tax years ending December 31, 2017 and 2016, as well as current business plans and financial expectations, Sphere 3D expects that it will not be a PFIC for its current tax year ending December 31, 2018 and for the foreseeable future. If Sphere 3D were to be classified as a PFIC for any future taxable year, holders of Sphere 3D common shares who are U.S. taxpayers would be subject to adverse U.S. federal income tax consequences.

Certain of our directors, officers and management could be in a position of conflict of interest.

Certain of the directors, officers and members of management of Sphere 3D may also serve as directors and/or officers of other companies. We may contract with such directors, officers, members of management and such other companies or with affiliated parties or other companies in which such directors, officers or members of management own or control. These persons may obtain compensation and other benefits in transactions relating to Sphere 3D. Consequently, there exists the possibility for such directors, officers and members of management to be in a position of conflict. Any decision made by any of such directors, officers and members of management involving Sphere 3D are being made in accordance with their duties and obligations to deal fairly and in good faith with a view to the best interests of Sphere 3D. Additionally, certain of the directors and officers of Sphere 3D may have interests in the Share Purchase that are different from the Company's other shareholders.

Future sales of common shares by directors, officers and other shareholders could adversely affect the prevailing market price for common shares.

Subject to compliance with applicable securities laws, officers, directors and other shareholders and their respective affiliates may sell some or all of their common shares in the future. No prediction can be made as to the effect, if any, such future sales will have on the market price of the common shares prevailing from time to time. However, the future sale of a substantial number of common shares by Sphere 3D's officers, directors and other shareholders and their respective affiliates, or the perception that such sales could occur, could adversely affect prevailing market prices for the common shares.

We may issue an unlimited number of common shares. Future sales of common shares will dilute your shares.

Sphere 3D's articles permit the issuance of an unlimited number of common shares, and shareholders will have no pre-emptive rights in connection with such further issuances. The directors of Sphere 3D have the discretion to determine the price and the terms of issue of further issuances of common shares in accordance with applicable laws.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

- We lease an 86,900 square foot facility in Guangzhou, China. This lease expires in July 2019. This facility houses manufacturing of the majority of our RDX product and repair services.
- We own a 25,600 square foot facility in Dortmund, Germany. This facility houses sales and marketing, operations, technical support, and administrative functions.
- We lease a 20,553 square foot facility in a light industrial complex in San Diego, California. The lease expires in March 2020. This facility houses repair services, research and development, technical support, and administrative functions.
- We lease a 19,413 square foot facility in Plano, Texas. The lease expires in July 2021. This facility houses operations, repair services, research and development and technical support.
- We lease a 10,282 square foot facility in San Jose, California. The lease expires in October 2022. The San Jose facility houses research and development, technical support, sales and marketing, and administrative functions.

We also lease additional smaller sales offices and research and development facilities throughout the U.S. and internationally.

Item 3. Legal Proceedings

The Company is, from time to time, subject to claims and suits arising in the ordinary course of business. In the opinion of management, the ultimate resolution of such pending proceedings will not have a material effect on the Company's results of operations, financial position or cash flows.

Patent Litigation Funding Agreement

In December 2010, Overland entered into a litigation funding agreement (the "Funding Agreement") with Special Situations Fund III QP, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund, L.P., and Special Situations Technology Fund II, L.P. (collectively, the "Special Situations Funds") pursuant to which the Special Situations Funds agreed to fund certain patent litigation brought by Overland. In May 2014, the Special Situations Funds filed a complaint against Overland in the Supreme Court for New York County, alleging breach of the Funding Agreement. The Special Situations Funds allege that Overland's January 2014 acquisition of Tandberg Data entitled the Special Situation Funds to a $6.0 million payment under the Funding Agreement, and therefore Overland's refusal to make the payment constitutes a breach of the Funding Agreement by Overland. In November 2014, the Special Situations Funds amended their complaint to allege that Overland breached the Funding Agreement's implied covenant of good faith and fair dealing by settling the patent litigation with BDT in bad faith to avoid a payment obligation under the Funding Agreement. The Special Situations Funds are seeking $6.0 million in contractual damages as well as costs and fees. On October 10, 2017, the Court entered an order granting Overland's motion for summary judgment and dismissing the Special Situations Funds' complaint in its entirety with prejudice. The Special Situations Funds have filed a notice of appeal.

Patent Infringement

In May 2013, Safe Storage LLC ("Safe Storage"), a Delaware limited liability company, filed a complaint against Overland in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,978,346 by our products. In February 2017, Overland and Safe Storage entered into a settlement agreement, pursuant to which the claim was dismissed.

Other

In January 2018, Mr. Vito Lupis filed a statement of claim in the Ontario Court of Justice alleging, among other things, breach of contracts, deceit and negligence against Mr. Giovanni J. Morelli, a former officer of the Company, and vicarious liability against the Company, in connection with stock purchase agreements and other related agreements that would have been entered into between Mr. Lupis and the Company in 2012. The Company believes the allegations are without merit and plans to vigorously defend itself against the allegations.

In April 2015, we filed a proof of claim in connection with bankruptcy proceedings of V3 Systems, Inc. ("V3") based on breaches by V3 of the Asset Purchase Agreement entered into between V3 and the Company dated February 11, 2014 (the "APA"). On October 6, 2015, UD Dissolution Liquidating Trust ("UD Trust"), the apparent successor to V3, filed a complaint against us and certain of our current and former directors in the U.S. Bankruptcy Court for the District of Utah Central Division objecting to our proof of claim and asserting claims for affirmative relief against us and our directors. This complaint alleges, among other things, that Sphere breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere common shares received by V3 pursuant to the APA. The plaintiff seeks, among other things, monetary damages for the loss of the potential earn-out consideration, the value of the common shares held back by us pursuant to the APA and costs and fees. We believe the lawsuit to be without merit and intend to vigorously defend against the action.

On December 23, 2015, we filed a motion seeking to dismiss the majority of the claims asserted by the UD Trust. On January 13, 2016, we filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. On July 22, 2016, we filed a motion seeking to transfer venue of this action to the United States District Court for the District of Delaware. The Bankruptcy Court granted our motion to transfer venue on August 30, 2016, and the case was formally transferred to the Delaware Court on October 11, 2016. There is currently no hearing set on our motion to dismiss.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common shares are listed on the NASDAQ Capital Market under the symbol “ANY”. The following table sets forth the high and low sales prices per share of our common stock during each quarter of the two most recent fiscal years:

	2017		2016	
	High	Low	High	Low
First Quarter	$14.00	$5.03	$50.00	$25.50
Second Quarter	$7.25	$2.75	$34.50	$16.58
Third Quarter	$6.60	$2.13	$23.75	$10.05
Fourth Quarter	$3.95	$1.90	$23.00	$4.50

On March 16, 2018, the closing sales price of our common stock on the NASDAQ Capital Market was $2.26 per share. As of March 16, 2018, we had approximately 31 shareholders of record and beneficial owners of our common shares.

Dividends

The Company has not declared or paid any dividends on its common shares to date. The Company’s current intention is to retain any future earnings to support the development of the business of Sphere 3D and does not anticipate paying cash dividends in the foreseeable future. Payment of any future dividends will be at the discretion of the Board of Directors of Sphere 3D after taking into account various factors, including but not limited to the financial condition, operating results, cash needs, growth plans and the terms of any credit agreements that Sphere 3D may be a party to at the time. The Purchase Agreement also imposes certain restrictions upon our ability to pay dividends during the period the Share Purchase is pending. Accordingly, investors must rely on sales of their Sphere 3D common shares after price appreciation, which may never occur, as the only way to realize a return on their investment.

Recent Sales of Unregistered Securities

On March 24, 2017, the Company completed a private placement of warrants exercisable to purchase up to 867,272 common shares under Section 4(a)(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D promulgated thereunder. Each warrant had an exercise price of $7.50 per warrant share. The warrants were exercisable for five years from the date of the effective date of the offering. The exercise price and number of shares issuable upon exercise of the warrants were subject to adjustment in certain circumstances. In August 2017, the Company issued additional common shares, which triggered a price adjustment for the March 24, 2017 warrants from $7.50 to $5.00 and the Company issued, in the aggregate, additional warrants exercisable to purchase up to 433,638 common shares, of which MF Ventures, LLC, a related party, received 90,909 warrants exercisable to purchase common shares. On March 16, 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 1,430,998 common shares in exchange for the surrender and cancellation of the Company’s outstanding March 24, 2017 warrants (the “Exchange”). Immediately after the Exchange, the previously issued warrants became null and void. MF Ventures, LLC, participated in the Exchange by acquiring 299,999 common shares in exchange for a warrant to purchase 272,727 common shares.

Item 6. Selected Financial Data

Not applicable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with our consolidated financial statements and notes included in the Annual Report on Form 10-K. In addition to historical information, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Actual results may differ substantially from those referred to herein due to a number of factors, including but not limited to risks described in the Part I, Item 1A, Risks Factors, and elsewhere in this Annual Report. References to "Notes" are Notes included in our Notes to Consolidated Financial Statements.

Overview

Sphere 3D provides next-generation solutions for standalone storage and long-term data archive products, as well as technologies that converge the traditional silos of compute, storage and network into one integrated "hyper-converged" or converged solution. We provide enterprise storage management solutions, the archiving of the data created by these solutions, and the ability to connect to public cloud services such as Microsoft Azure for additional delivery options and hybrid cloud capabilities. Our solutions are tightly integrated and include a patented portfolio for operating systems for storage, proprietary virtual desktop orchestration software, and proprietary application container software. Our software, combined with commodity x86 servers, or its purpose built appliances, deliver solutions that provide application mobility, security, data integrity and simplified management. These solutions can be deployed through a public, private or hybrid cloud and are delivered through our global reseller network and professional services organization. We have a portfolio of brands including Overland-Tandberg™, HVE ConneXions and UCX ConneXions, dedicated to helping customers achieve their IT goals.

We have created our own platform, Glassware 2.0™ ("Glassware") for the delivery of applications from a server-based computing architecture. This is accomplished through a number of unique approaches to virtualization utilized by Glassware including the use of software "containers" and "microvisors." A container refers to software that takes an application and all the things required to run that application and encapsulates them with software. By doing so, users can run numerous applications from a single server and on a single copy of the operating system. A microvisor refers to the technology that allows non-Windows® based applications to run on the same servers as Windows software using a lightweight emulator. Glassware sales are not material.

Recent Developments

- On March 16, 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 1,430,998 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. MF Ventures, LLC, participated in the Exchange by acquiring 299,999 common shares in exchange for a warrant to purchase 272,727 common shares.
- On February 20, 2018, the Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company ("Overland"), and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, the Company's Chief Executive Officer and Chairman of the Board of Directors (the "Purchaser") entered into a share purchase agreement (the "Purchase Agreement"), pursuant to which, among other things, and subject to certain closing conditions, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million (the "Purchase Price"), subject to a working capital adjustment (the "Share Purchase"). The net proceeds from the Share Purchase will be used to repay: (i) the Company's outstanding obligations under its Credit Agreement with Opus Bank; (ii) its outstanding obligations under the related party convertible note with FBC Holdings S.a.r.l. ("FBC Holdings"); and (iii) its related party subordinated promissory note with MF Ventures, LLC. The Special Committee of the Board of Directors of the Company and the Board of Directors of the Company (with Eric Kelly recusing himself) unanimously approved the entry into the Purchase Agreement by the Company.
- On July 5, 2017, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

- On January 27, 2017, the Company acquired 80.1% of the outstanding equity securities and membership interests of UCX and HVE, respectively, for $1.1 million in cash and issued 88,235 common shares for an approximate value of $0.3 million, such that after such acquisition, the Company owned 100% of the outstanding equity securities of each such entity. UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's technologies, professional services and engineering talent, and HVE's products, engineering and virtualization expertise, the Company intends to expand its virtualization offerings as well as enhance its ability to accelerate the delivery of hybrid cloud solutions to customers.

Results of Operations

The following table sets forth certain financial data as a percentage of net revenue:

	Year Ended December 31,	
	2017	**2016**
Net revenue	100.0 %	100.0 %
Cost of revenue	69.7	70.8
Gross profit	30.3	29.2
Operating expenses:		
Sales and marketing	22.9	29.1
Research and development	8.9	11.5
General and administrative	24.7	27.1
Impairment of goodwill and acquired intangible assets	3.1	45.0
	59.6	112.7
Loss from operations	(29.3)	(83.5)
Interest expense	(7.3)	(6.7)
Other income, net	2.5	1.7
Loss before income taxes	(34.1)	(88.5)
(Benefit from) provision for income taxes	(2.0)	1.1
Net loss	(32.1)%	(89.6)%

A summary of the sales mix by product follows (in thousands):

	Year Ended December 31,		
	2017	**2016**	**Change**
Disk systems	$ 52,486	$ 46,795	12.2 %
Tape automation systems	9,718	10,297	(5.6)%
Tape drives and media	10,615	10,973	(3.3)%
Service	8,704	8,328	4.5 %
Total	$ 81,523	$ 76,393	6.7 %

We divide our worldwide sales into three geographical regions: EMEA, consisting of Europe, the Middle East and Africa; Americas; and APAC, consisting of Asia Pacific countries.

The following table summarizes net revenue by geographic area (in thousands):

	Year Ended December 31,		
	2017	2016	Change
EMEA	$ 37,365	$ 39,719	(5.9)%
Americas	28,213	23,043	22.4 %
APAC	15,945	13,631	17.0 %
Total	$ 81,523	$ 76,393	6.7 %

Comparison of Years Ended December 31, 2017 and 2016

Net Revenue

We had revenue of $81.5 million during 2017 compared to $76.4 million during 2016. The increase in net revenue is a result of an increase in product revenue of $4.7 million primarily due to the addition of sales units for disk systems from the HVE product line acquired in January 2017, and an increase in service revenue of $0.4 million primarily due to service revenue from our January 2017 acquisition. Original equipment manufacturer ("OEM") net revenue accounted for 16.6% and 18.5% of net revenue during the years ended 2017 and 2016, respectively.

Product Revenue

Net product revenue increased to $72.8 million during 2017 from $68.1 million during 2016, an increase of $4.7 million. Revenue from disk systems increased by $5.7 million primarily related to the addition of $6.0 million of product revenue from the HVE product line acquired in January 2017, offset by a $0.3 million net decrease in disk systems other than our RDX® and HVE product lines. In addition, there was a $0.9 million decrease in tape automation, and tape drives and media revenue related to lower tape media sales volume.

Service Revenue

Net service revenue increased to $8.7 million during 2017 from $8.3 million during 2016. The increase of approximately $0.4 million was primarily due to an addition of $2.0 million of service revenue from our January 2017 acquisition, offset by a decrease in extended service contracts related to tape automation product sales.

Gross Profit

Gross profit and margin were as follows (in thousands, unless otherwise noted):

	2017	2016	Change
Gross profit	$ 24,684	$ 22,339	10.5%
Gross margin	30.3%	29.2%	1.1 pt
Gross profit - product	$ 19,677	$ 17,631	11.6%
Gross margin - product	27.0%	25.9%	1.1 pt
Gross profit - service	$ 5,007	$ 4,708	6.4%
Gross margin - service	57.5%	56.5%	1.0 pt

In 2017, gross profit for product increased due to higher sales volume in our disk system revenues primarily related to higher sales volumes in our RDX® product line as well as product revenue from the HVE products we acquired in our January 2017 acquisition. Gross profit for service increased due to the service revenue relating to our January 2017 acquisition.

Operating Expenses

Sales and Marketing Expense

Sales and marketing expenses were $18.7 million and $22.2 million for the years ended December 31, 2017 and 2016, respectively. The 2017 decrease of $3.5 million was primarily due to a decrease of $1.9 million in employee and related expenses associated with a lower average headcount, a $0.7 million decrease in share-based compensation, and a $0.9 million decrease in strategic marketing and outside contractors' fees.

Research and Development Expense

Research and development expenses were $7.3 million and $8.8 million for the years ended December 31, 2017 and 2016, respectively. The 2017 decrease of $1.5 million was primarily due to a decrease of $1.1 million in employee and related expenses and a $0.3 million increase in share-based compensation.

General and Administrative Expense

General and administrative expenses were $20.1 million and $20.7 million for the years ended December 31, 2017 and 2016, respectively. The 2017 decrease of $0.6 million was primarily due to a $0.7 million decrease in bad debt expense, a $0.5 million decrease in legal and advisory expenses primarily related to transactional matters and litigation, a $0.3 million decrease in share-based compensation expense, a $0.2 million decrease in outside contractor fees. These decreases were offset by a $0.9 million increase in employee related expenses and a $0.3 million increase in amortization expense related to intangible assets.

Impairment of Goodwill and Acquired Intangible Assets

Impairment of goodwill and acquired intangible assets were $2.5 million and $34.4 million for the years ended December 31, 2017 and 2016, respectively. As a result primarily of the Company's change in revenue projection for its Snap product line, it was determined the carrying value of indefinite-lived intangible assets exceeded its estimated fair value. The Company compared the indicated fair value to the carrying value of its indefinite-lived assets, and as a result of the analysis, an impairment charge of $2.2 million was recorded to indefinite-lived trade names for the year ended December 31, 2017. In addition, the Company recorded an impairment of $0.3 million related to developed technology for the year ended December 31, 2017. In 2016, we concluded that our declining market capitalization could be an indicator of impairment and, therefore, had a third party impairment analysis performed. As a result of the analysis, we recorded an impairment of $33.2 million related to goodwill from our December 2014 acquisition of Overland and an impairment of $1.2 million related to indefinite-lived trade names.

Non-Operating Expenses

Interest Expense

Interest expense was $5.9 million and $5.1 million for the years ended December 31, 2017 and 2016, respectively. The increase was primarily related to an increase in amortization of debt costs of $0.8 million.

Other Income, Net.

Other income, net, in 2017 and 2016 was $2.0 million and $1.3 million, respectively. In 2017, other income, net, primarily related to a net gain on the revaluation of warrants of $2.2 million and realized foreign currency gains of $0.9 million, which was offset by a $1.1 million loss from the revaluation of our investment in connection with our January 2017 acquisition. In 2016, other income, net, was primarily related to a gain on revaluation of warrants.

Income Tax

Income tax benefit was $1.6 million for the year ended December 31, 2017, which primarily related to a reduction in the deferred tax liabilities and a release of foreign valuation allowance; offset by foreign tax expense. Income tax expense was $0.8 million for the year ended December 31, 2016, which primarily related to deferred foreign tax expense; offset by a reduction in the deferred tax liabilities for the $1.2 million impairment on intangible assets recognized in 2016.

Foreign Currency Risk

We conduct business on a global basis and a significant portion of our sales in international markets are not denominated in U.S. dollars. Our wholly-owned foreign subsidiaries incur costs that are denominated in local currencies. As exchange rates vary, these results may vary from expectations when translated into U.S. dollars, which could adversely impact overall expected results. The effect of exchange rate fluctuations on our results of operations resulted in a gain of $0.9 million in 2017 and a minimal loss in 2016.

Liquidity and Capital Resources

We have recurring losses from operations and a net working capital deficiency. Our primary source of cash flow is generated from sales of our disk and tape automation systems. We have financed our operations through gross proceeds from private sales of equity securities and with borrowings under our credit facilities. At December 31, 2017, we had cash of $4.6 million compared to cash of $5.1 million at December 31, 2016. As of December 31, 2017, we had a working capital deficit of $41.6 million, reflecting a decrease in current assets of $4.0 million and an increase in current liabilities of $25.1 million compared to December 31, 2016. The increase in current liabilities was primarily related to $24.4 million of debt reclassified from long-term to current. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows as we continue to maintain and increase our sales volume, and maintain operational efficiencies.

On February 20, 2018, the Company, Overland, and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, the Company’s Chief Executive Officer and Chairman of the Board of Directors (the “Purchaser”) entered into a share purchase agreement (the “Purchase Agreement”), pursuant to which, among other things, and subject to certain closing conditions, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million (the “Purchase Price”), subject to working capital adjustments (the “Share Purchase”). The net proceeds from the Share Purchase will be used to repay: (i) the Company’s outstanding obligations under its Credit Agreement with Opus Bank; (ii) its outstanding obligations under the related party convertible note with FBC Holdings S.a.r.l. (“FBC Holdings”); and (iii) its related party subordinated promissory note with MF Ventures, LLC. The Special Committee of the Board of Directors of the Company and the Board of Directors of the Company (with Eric Kelly recusing) unanimously approved the entry into the Purchase Agreement by the Company. See *Note 1 - Organization and Business* for additional details.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond March 31, 2018 if the Company is unable to amend, refinance, or pay off its debt and credit facilities. In February 2018, the Company entered into a Purchase Agreement. If the transactions contemplated by the Purchase Agreement are consummated, the Company expects that the proceeds to be received by the Company would be sufficient to pay off its outstanding debt and credit facilities. The Company anticipates to hold a special shareholder meeting in April 2018 to seek shareholder approval for the Share Purchase and, subject to the receipt of requisite shareholder approval, anticipates the transaction will close shortly thereafter. There can be no guarantee that we will be able to raise additional funds or amend or refinance our debt and credit facilities on favorable terms or at all, nor can there be any guarantee that the Company’s shareholders will approve the Share Purchase. Significant changes from the Company’s current forecasts, including but not limited to: (i) failure to comply with the financial covenants in its credit facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company’s ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on the Company’s business, results of operations, financial position and liquidity.

As a result of our recurring losses from operations and negative cash flows, the report from our independent registered public accounting firm regarding our consolidated financial statements for the year ended December 31, 2017 includes an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern.

As of December 31, 2017, our outstanding debt balance was as follows (in thousands):

	Maturity Date	Interest Rate	Amount Outstanding
Convertible note related party - net	3/31/2018	8.0%	$ 24,400
Term loan	3/31/2018	8.25%	$ 10,000
Revolving loan	3/31/2018	8.25%	$ 8,195
Term loan - related party	1/31/2018	20.0%	$ 191
Subordinated promissory note, related party - net	3/31/2018	12.5%	$ 1,980

All debt and credit facilities are denominated in U.S. dollars. Our debt and credit facilities contain standard borrowing conditions and can be recalled by the lenders if certain conditions are not met.

In December 2017, the Company entered into a $2.0 million subordinated promissory note with MF Ventures, LLC, a related party. The promissory note is subordinate to the Company's Opus Bank Credit Agreement and FBC Holdings indebtedness and has a maturity date of the earliest of: (i) December 11, 2020; (ii) immediately after repayment in full of the Opus Bank Credit Agreement and the FBC Holdings indebtedness; or (iii) immediately after the Company's refinancing of both the Opus Bank Credit Agreement and the FBC Holdings indebtedness. The promissory note may be prepaid at any time by the Company; including any accrued and unpaid interest and a $0.3 million prepayment penalty. The promissory note bears interest at a 12.5% simple annual interest rate, payable quarterly in arrears. Interest shall be paid in kind by increasing the principal amount of the note on each quarterly interest payment date.

The following table shows a summary of our cash flows (used in) provided by operating activities, investing activities and financing activities (in thousands):

	Year Ended December 31, 2017	Year Ended December 31, 2016
Net cash used in operating activities	$ (8,965)	$ (17,473)
Net cash used in investing activities	$ (1,174)	$ (237)
Net cash provided by financing activities	$ 9,534	$ 14,123

The use of cash during 2017 was primarily a result of our net loss of $26.2 million offset by $15.5 million in non-cash items, which included share-based compensation, depreciation and amortization, an impairment to goodwill and acquired intangible assets, amortization of debt issuance costs, deferred tax provision, and fair value adjustment of warrants.

During 2017, net cash used in investing activities were primarily related to our January 2017 acquisition. During 2016, capital expenditures totaled $0.2 million and were primarily associated with computer equipment to support product quality.

During 2017, we received $9.8 million net, from the issuance of common shares and $2.0 million from a note payable with a related party, offset by $2.3 million in payments to holders of related party debt. During 2016, we received $8.3 million from net proceeds of debt issuance, of which $2.5 million was related to net payments to the holders of our related party debt; $2.1 million was from the issuance of common shares for equity financings; and $3.7 million was from the exercise of warrants.

Off-Balance Sheet Information

During the ordinary course of business, we may provide standby letters of credit to third parties as required for certain transactions initiated by us. As of December 31, 2017, we had no standby letters of credit outstanding.

Contractual Obligations

The following schedule summarizes our contractual obligations to make future payments at December 31, 2017 (in thousands):

Contractual Obligations	Total	Less than 1 year	1-3 years	3-5 years	After 5 years
Long-term debt — related party, including interest(1)	$ 27,256	$ 27,256	$ —	$ —	$ —
Credit facility and term note, including interest(1)	18,570	18,570	—	—	—
Operating lease obligations (2)	5,120	1,697	2,288	1,135	—
Purchase obligations(3)	2,124	2,124	—	—	—
Total contractual obligations	$ 53,070	$ 49,647	$ 2,288	$ 1,135	$ —

(1) Interest payments have been calculated using the amortization profile of the debt outstanding at December 31, 2017, taking into account the fixed rate paid at year end.

(2) Represents contractual lease obligations under non-cancelable operating leases.

(3) Represents purchase orders for inventory and non-inventory items entered into prior to December 31, 2017, with purchase dates extending beyond January 1, 2018. Some of these purchase obligations may be canceled.

Critical Accounting Estimates

The discussion and analysis of our financial position and results of operations are based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. The preparation of our consolidated financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosure of contingent assets and liabilities. We review our estimates on an ongoing basis. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions. Our significant accounting policies are outlined in *Note 2 to the Consolidated Financial Statements* included in this Annual Report on Form 10-K. We believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our consolidated financial statements

Revenue Recognition

Revenue from sales of products is recognized when persuasive evidence of an arrangement exists, the price is fixed or determinable, collectability is reasonably assured and delivery has occurred. Under this policy, revenue on direct product sales, excluding sales to distributors, is recognized upon shipment of products to customers. These customers are not entitled to any specific right of return or price protection, except for any defective product that may be returned under our standard product warranty. Revenue from services, such as extended product warranties, are deferred and recognized over the period of the service agreement.

Depending on delivery terms, title and risk of loss transfer to the customer when the product leaves the Company’s dock, or when the product arrives at the customer’s location. Product sales to distribution customers are subject to certain rights of return, stock rotation privileges and price protection. Because we are unable to estimate its exposure for returned product or price adjustments, revenue from shipments to these customers is not recognized until the related products are in turn shipped to the ultimate customer by the distributor. For products for which software is more than an incidental component, we recognize revenue in accordance with current authoritative guidance for software revenue recognition.

In limited circumstances where a customer is unable to accept shipment and requests products be delivered to, and stored on, the Company's premises, revenue is recognized when: (i) the customer has accepted risk of loss and acknowledged passage of title to the goods (ii) the customer has made a fixed commitment to purchase the products, (iii) the customer has requested delayed delivery and storage of the products, (iv) there is an agreed schedule for shipment of products to the customer within a reasonable period of time, (v) the Company has no specific performance obligation such that the earnings process for the products, as a unit of accounting, is not complete, (vi) the goods are segregated from the inventory and not available to fill other orders, (vii) the product is complete, ready for shipment and accepted by the customer, and (viii) all other criteria above for revenue recognition have been met.

The Company enters into revenue arrangements that may consist of multiple deliverables of its product and service offerings, such as for sales of hardware devices and extended warranty services. The Company allocates revenue to deliverables in multiple element arrangements based on relative selling prices. The Company determines its vendor-specific objective evidence ("VSOE") based on its normal pricing and discounting practices for the specific product or service when sold separately. When the Company is not able to establish VSOE for all deliverables in an arrangement with multiple elements, the Company determines the selling price of each element based on third party evidence of selling price, or based on the Company's actual historical selling prices of similar items, whichever management believes provides the most reliable estimate of expected selling prices.

Inventory Valuation

Inventories are stated at the lower of cost and net realizable value using the first-in-first-out method. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. We assess the value of inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost, and net realizable value. If necessary, we write down its inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the net realizable value.

Goodwill and Intangible Assets

Goodwill represents the excess of consideration paid over the value assigned to the net tangible and identifiable intangible assets acquired. For intangible assets purchased in a business combination, the estimated fair values of the assets received are used to establish their recorded values. For intangible assets acquired in a non-monetary exchange, the estimated fair values of the assets transferred (or the estimated fair values of the assets received, if more clearly evident) are used to establish their recorded values. Valuation techniques consistent with the market approach, income approach and/or cost approach are used to measure fair value.

Purchased intangible assets are amortized on a straight-line basis over their economic lives of six to 25 years for channel partner relationships, three to nine years for developed technology, three to eight years for capitalized development costs, and two to 25 years for customer relationships as this method most closely reflects the pattern in which the economic benefits of the assets will be consumed.

Impairment of Goodwill, Intangible Assets and Long-Lived Assets

Goodwill and intangible assets are tested for impairment on an annual basis at December 31, or more frequently if there are indicators of impairment. Triggering events for impairment reviews may be indicators such as adverse industry or economic trends, restructuring actions, lower projections of profitability, or a sustained decline in our market capitalization. Intangible assets are quantitatively assessed for impairment, if necessary, by comparing their estimated fair values to their carrying values. If the carrying value exceeds the fair value, the difference is recorded as an impairment.

Long-lived assets are reviewed for recoverability whenever events or changes in circumstances indicate the carrying value may not be recoverable. Our consideration includes, but is not limited to: (i) significant under-performance relative to historical or projected future operating results; (ii) significant changes in the manner of use of the assets or the strategy for the Company's overall business; (iii) significant decrease in the market value of the assets; and (iv) significant negative industry or economic trends. When the carrying value is not considered recoverable, an impairment loss for the amount by which the carrying value of a long-lived asset exceeds its fair value is recognized, with an offsetting reduction in the carrying value of the related asset.

Recent Accounting Pronouncements

See *Note 2 - Significant Accounting Policies* for additional details.

ITEM 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may impact our financial position, results of operations, or cash flows due to adverse changes in financial and commodity market prices and rates. We are exposed to market risk from changes in foreign currency exchange rates as measured against the U.S. dollar. These exposures are directly related to our normal operating and funding activities. Historically, we have not used derivative instruments or engaged in hedging activities.

Foreign Currency Risk. We conduct business on a global basis and a significant portion of our sales in international markets are not denominated in U.S. dollars. Export sales represent a significant portion of our sales and are expected to continue to represent a significant portion of sales. Purchase contracts are typically in U.S. dollars. In addition, our wholly-owned foreign subsidiaries incur costs that are denominated in local currencies. As exchange rates vary, these results may vary from expectations when translated into U.S. dollars, which could adversely impact overall expected results. Such transactions resulted in a gain of $0.9 million in 2017 and a minimal loss in 2016.

Credit Risk. Credit risk is the risk that the counterparty to a financial instrument fails to meet its contractual obligations, resulting in a financial loss to us. We sell to a diverse customer base over a global geographic area. We evaluate collectability of specific customer receivables based on a variety of factors including currency risk, geopolitical risk, payment history, customer stability and other economic factors. Collectability of receivables is reviewed on an ongoing basis by management and the allowance for doubtful receivables is adjusted as required. Account balances are charged against the allowance for doubtful receivables when we determine that it is probable that the receivable will not be recovered. We believe that the geographic diversity of the customer base, combined with our established credit approval practices and ongoing monitoring of customer balances, mitigates this counterparty risk.

Liquidity Risk. Liquidity risk is the risk that we will not be able to meet our financial obligations as they come due. We continually monitor our actual and projected cash flows and believe that our internally generated cash flows will not provide us with sufficient funding to meet all working capital and financing needs for at least the next 12 months.

Item 8. Financial Statements and Supplemental Data

Our consolidated financial statements and supplementary data required by this item are set forth at the pages indicated in Item 15(a)(1) and 15(a)(2), respectively.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rules 13a-15(e) or 15d-15(e) under the Exchange Act. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective to give reasonable assurance that information required to be publicly disclosed is recorded, processed, summarized and reported on a timely basis as of the end of the period covered by this annual report.

Management’s Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over our financial reporting. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, management has conducted an assessment, including testing, using the criteria in Internal Control-Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”). Our system of internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Based on our evaluation under the framework in Internal Control-Integrated Framework, our Chief Executive Officer and Chief Financial Officer concluded that our internal control over financial reporting was effective as of December 31, 2017. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions and that the degree of compliance with the policies or procedures may deteriorate.

This annual report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report on internal control over financial reporting was not subject to attestation by our independent registered public accounting firm pursuant to rules of the SEC that permit us to provide only management's report in this annual report.

This report on internal control over financial reporting shall not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, and is not incorporated by reference into any of our filings, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the year ended December 31, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The following table sets forth the name, age, and position of our directors and executive officers as of March 16, 2018:

Name	Age	Director Since	Positions with our Company
Cheemin Bo-Linn(1)	64	April 17, 2017	Director, Chair of Audit Committee
Eric L. Kelly	59	July 15, 2013	Chief Executive Officer, Chairman and Director
Vivekanand Mahadevan(1)	64	December 1, 2014	Director, Chair of Nominating and Governance Committee
Duncan McEwan(1)	64	May 10, 2017	Director, Chair of Compensation Committee
Peter Tassiopoulos	49	March 7, 2014	President, Vice Chairman and Director
Kurt L. Kalbfleisch	52	N/A	Senior Vice President, Chief Financial Officer and Secretary
Jenny C. Yeh	44	N/A	Senior Vice President and General Counsel

(1) Member of Audit Committee, Compensation Committee and Nominating and Governance Committee.

Each of the above-listed directors served in such capacities for all of fiscal 2017 except for Dr. Bo-Linn who was appointed to the Board and each committee on April 17, 2017 following the resignation of Glenn Bowman from the Board and Mr. McEwan who was appointed to the Board and each committee on June 28, 2017 following the resignation of Peter Ashkin from the Board. There are no family relationships between any of our directors or executive officers, and there are no arrangements or understandings between any of the directors and any other person pursuant to which such director was or is selected as a director.

Dr. Cheemin Bo-Linn is the Chief Executive Officer and President of Peritus Partners Inc., an international consulting group recognized for leading companies to increasing business valuation or next level growth or merger and acquisition ("M&A"), and has held this position since January 2013. From September 2010 to November 2012, she was Chief Marketing Officer, Chief Revenue Officer and consultant at NetLine Corporation, a global online multi-channel digital media network, mobile applications and content marketing services company. From July 2006 to August 2010, she was President of Peritus Partners Inc./BL Group. From June1980 to June 2006, she held a number of senior executive business management roles including at IBM as Vice-President of Electronics, and other roles with responsibilities ranging from strategy, marketing, sales, operations and investments across storage and software products and consulting services. She presently serves as Board of Director of SNOMED, a global software language, and Evena Medical, Inc., loT smart imaging visualization. She previously served as a member of the Board of Directors of Violin Memory, Inc., NetLine Corporation, Association of Corporate Growth-SV, American Electronics and several private companies. She holds a Doctorate of Education focused on "Computer-based Management Information Systems and Organizational Change" from the University of Houston.

Eric L. Kelly has served as Chairman of the Board since July 2013 and Chief Executive Officer of the Company since December 1, 2014. Mr. Kelly formerly served as Chief Executive Officer of Overland Storage, Inc. ("Overland") since January 2009, President and Chief Executive Officer of Overland since January 2010 and has been a member of Overland's board of directors since November 2007. He is a strategic, global technology executive with over 35 years of experience in developing accelerated growth strategies, improving profitability of complex global businesses, organizational transformations, technology and business innovation, corporate financing, and mergers and acquisitions and intellectual property management and cybersecurity for Fortune 500, 1000 and private companies. In addition, Mr. Kelly has over 15 years of board experience which includes public companies trading on the U.S. and Canada stock exchanges, private companies, universities and foundations. Prior to joining Overland, Mr. Kelly was President of Silicon Valley Management Partners Inc., a management consulting and merger and acquisition advisory firm which he co-founded in 2007. His earlier positions have included Vice President and General Manager of Storage Systems Solutions at Adaptec Inc., President and CEO of Snap Appliance which was acquired by Adaptec, President of the Systems Division at Maxtor Corp., Enterprise Vice President at Dell Computer Corp., and various executive-level roles with Diamond Multimedia, Conner Peripherals and IBM. Mr. Kelly served on the U.S. Department of Commerce's Manufacturing Council from February 2012 to January 2017, where he offered advice and counsel to the U.S. Administration on strategies and policy recommendations on ways to promote and advance U.S. manufacturing globally, and from February 2012 to January 2017 he was appointed to President Obama's Science, Technology and Advanced Manufacturing Steering Committee. He also serves on the board of the San Jose State University Tower Foundation, member of the Finance and Investment Committee and a member of the Global Leadership Council SJSU Lucas College and Graduate School of Business. Mr. Kelly earned an M.B.A. from San Francisco State University and a B.S. in Business Management from San Jose State University.

Vivekanand Mahadevan has been the Chief Executive Officer of Dev Solutions, Inc., a consulting firm that helps technology startups build next-generation market leaders in data analytics, security, storage and cloud markets since March 2012. Mr. Mahadevan was the Chief Strategy Officer for NetApp, Inc., a supplier of enterprise storage and data management software and hardware products and services, from November 2010 until February 2012. Prior to that time served as Vice President of Marketing for LSI Corporation, an electronics company that designs semiconductors and software that accelerate storage and networking, from January 2009 to September 2010. Prior to LSI Corporation, he was Chief Executive Officer for Deeya Energy, Inc., and has also held senior management positions with leading storage and systems management companies including BMC Software, Compaq, Ivita, and Maxxan Systems. Mr. Mahadevan previously served as a member of the Board of Directors of Violin Memory, Inc. Mr. Mahadevan holds an M.B.A. in Marketing and MS in Engineering from the University of Iowa as well a degree in Mechanical Engineering from the Indian Institute of Technology.

Duncan J. McEwan is president of Diligent Inc., a consulting company he founded in 1991 specializing in M&A and strategic advice for technology-based clients. Mr. McEwan was Executive Vice President and Chief Strategy Officer of Call-Net Enterprises Inc., a provider of long-distance telephone services until it merged into Rogers Communication Inc. (2004-2005); President and Chief Operating Officer of Sprint Canada Inc., an integrated, national telecommunications provider (2001-2004); Chief Executive Officer of Northpoint Canada Communications, a provider of high-speed data and Internet (DSL) lines (2000-2001); Vice President of Business Development of Canadian Satellite Communications (“Cancom”) (1996-1998); and President and Chief Executive Officer of Cancom (1998-2000). Mr. McEwan has been Chairman of the Board of Geminare, Inc. since 2010, an emerging global leader in business continuity and cloud-based software systems and has previously served on a number of other public and private company boards. Mr. McEwan is a graduate of the University of Toronto.

Peter Tassiopoulos has served as President of the Company since December 1, 2014. Mr. Tassiopoulos served as the Chief Executive Officer of the Company from March 2013 until December 1, 2014. Mr. Tassiopoulos has extensive experience in information technology business development and global sales as well as a successful track record leading early-stage technology companies. He has been actively involved as a business consultant over the past 10 years, including acting as Chief Operating Officer and then Chief Executive Officer of BioSign Technologies Inc. from September 2009 to April 2011 and Chief Executive Officer of IgeaCare Systems Inc. from February 2003 to December 2008.

Kurt L. Kalbfleisch has served as Senior Vice President and Chief Financial Officer of the Company since December 1, 2014. Mr. Kalbfleisch had 20 years of service with Overland and served as Overland's Senior Vice President since June 2012, Chief Financial Officer since February 2008, and Secretary since October 2009. Prior to that, he served as Overland's Vice President of Finance from July 2007 to June 2012. Mr. Kalbfleisch also serves on the board of Paladin Group.

Jenny C. Yeh has served as Vice President and General Counsel of the Company since October 5, 2015 and Senior Vice President and General Counsel since November 9, 2017. Prior to joining the Company, Ms. Yeh served as Executive Counsel, Transactions and Finance, at General Electric Company where she was a senior legal advisor to GE Corporate business development group, supporting global corporate strategy and transactions across all GE industrial businesses worldwide. From 2007 to 2011, Ms. Yeh was a corporate partner at Baker & McKenzie LLP, where she advised clients in general corporate and securities matters, with a specialization in complex cross-border transactions. Ms. Yeh holds a Juris Doctorate from Georgetown University Law Center, and Bachelor of Arts degrees from the University of California at Berkeley.

Section 16(a) Beneficial Ownership Reporting Compliance

We were a foreign private issuer during 2017 and, as such, were not subject to the reporting requirements under Section 16(a) of the Exchange Act.

Code of Ethics

We have adopted a code of ethics that applies to the members of our board of directors, executive officers and all employees. Such code is posted on the Company’s website and is available at www.sphere3d.com. If we make any substantive amendments to the Code of Business Conduct and Ethics Policy or grant any waiver from a provision of the code applying to our principal executive officer or our principal financial or accounting officer, we will disclose the nature of such amendment or waiver on our website or in a current report on Form 8-K.

Audit Committee

We have a standing audit committee as defined in Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended. The members of the Audit Committee are Cheemin Bo-Linn, Duncan L. McEwan and Vivekanand Mahadevan.

In addition to being independent under NASDAQ Marketplace Rule 5605(a)(2), all members of the Audit Committee must meet the additional independence standards for audit committee members set forth in Rule 10A-3(b)(1) of the Exchange Act and NASDAQ Marketplace Rule 5605(c)(2)(A). The Board of Directors has determined that Dr. Bo-Linn qualifies as an audit committee financial expert as defined in Item 407(d)(5) of Regulation S-K under the Exchange Act.

Item 11. Executive Compensation

Summary Compensation Table

The following table summarizes the compensation earned during the fiscal years ended December 31, 2017 and 2016 by our principal executive officer, our principal financial officer, and our other most highly compensated executive officers (referred to as our "named executive officers").

Name and Principal Position	Year	Salary ($)	Share- based Awards ($)		Non-equity Incentive Plan Compensation(1) ($)	All Other Compensation(2) ($)	Total Compensation ($)
Eric L. Kelly	2017	400,000	889,900	(3)	100,000	61,718	1,451,618
Chief Executive Officer	2016	400,000	—		150,000	17,674	567,674
Peter Tassiopoulos(4)	2017	237,548	157,000	(5)	59,387	4,643	458,578
President	2016	214,480	—		91,752	3,417	309,649
Kurt L. Kalbfleisch	2017	300,000	478,912	(6)	45,000	36,984	860,896
Senior Vice President and Chief Financial Officer	2016	300,000	—		67,500	23,593	391,093
Jenny C, Yeh	2017	300,000	439,552	(7)	15,000	15,995	770,547
Senior Vice President and General Counsel	2016	300,000	173,100	(8)	22,500	6,308	501,908

(1) The amounts shown in the "Non-equity Incentive Plan Compensation" column represent bonuses awarded to the named executive officer for the applicable year under our bonus program in effect for that year.

(2) The amounts shown in the "All Other Compensation" column reflect amounts we paid on the named executive officers' behalf for health insurance and life insurance premiums and certain out-of-pocket medical expenses.

(3) This amount is comprised of two awards: i) a restricted stock unit for 48,000 shares granted on July 10, 2017 and was valued at $3.93 per share on the grant date (the closing market price for a share of our common stock on that date); and ii) a restricted stock unit for 287,500 shares granted on December 18, 2017 and was valued at $2.44 per share on the grant date (the closing market price for a share of our common stock on that date). Mr. Kelly irrevocably declined his restricted stock unit granted on July 10, 2017 subsequent to Board approval.

(4) The dollar amounts reported for Mr. Tassiopoulos in the above table are presented after conversion from Canadian dollars to U.S. dollars. For 2017 and 2016, the average U.S. dollar to Canadian dollar conversion rate in effect was 1.305 and 1.3275, respectively.

(5) This award is a restricted stock unit which was granted on July 10, 2017 and was valued at $3.93 per share on the grant date (the closing market price for a share of our common stock on that date). Mr. Tassiopoulos irrevocably declined this award subsequent to Board approval.

(6) This amount is comprised of two awards: i) a restricted stock unit for 32,000 shares granted on July 10, 2017 and was valued at $3.93 per share on the grant date (the closing market price for a share of our common stock on that date); and ii) a restricted stock unit for 144,800 shares granted on December 18, 2017 and was valued at $2.44 per share on the grant date (the closing market price for a share of our common stock on that date).

(7) This amount is comprised of two awards: i) a restricted stock unit for 32,000 shares granted on July 10, 2017 and was valued at $3.93 per share on the grant date (the closing market price for a share of our common stock on that date); and ii) a restricted stock unit for 128,669 shares granted on December 18, 2017 and was valued at $2.44 per share on the grant date (the closing market price for a share of our common stock on that date).

(8) This award is a restricted stock unit which was granted on August 9, 2016 and was valued at $21.75 per share on the grant date (the closing market price for a share of our common stock on that date).

Outstanding Equity Awards at 2017 Fiscal Year-End

The following table provides information about the current holdings of stock and option awards by our named executive officers at December 31, 2017.

		Option-based Awards				Stock Awards	
Name	Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price(1) ($)	Option Expiration Date	Number of Units of Stock Not Vested (#)	Market Value of Units of Stock Not Vested(2) ($)
Eric L. Kelly	7/9/2013	34,000	—	12.45	7/8/2023	—	—
	9/16/2013	1,000	—	51.34	9/15/2023	—	—
	8/26/2015	5,600	—	67.75	8/26/2021	—	—
	8/26/2015	—	—	—	—	2,240 (3)	5,510
	12/18/2017	—	—	—	—	287,500 (4)	707,250
Peter Tassiopoulos	3/4/2013	4,000	—	16.28	3/3/2018	—	—
	9/16/2013	4,000	—	51.34	9/15/2023	—	—
Kurt L. Kalbfleisch	8/26/2015	4,000	—	67.75	8/26/2021	—	—
	8/26/2015	—	—	—	—	1,600 (3)	3,936
	7/10/2017	—	—	—	—	32,000 (5)	78,720
	12/18/2017	—	—	—	—	144,800 (4)	356,208
Jenny C. Yeh	11/10/2015	—	—	—	—	2,666 (6)	6,558
	8/9/2016	—	—	—	—	5,332 (7)	13,117
	7/10/2017	—	—	—	—	32,000 (5)	78,720
	12/18/2017	—	—	—	—	128,669 (4)	316,526

(1) The exercise prices reported for the options expiring in 2023 for Mr. Kelly, and for each of the options expiring in 2018 and 2023 for Mr. Tassiopoulos, in the table above are presented after conversion from Canadian dollars to U.S. dollars based on an exchange rate of 1.305 Canadian dollars to one U.S. dollar, which is the average conversion rate in effect for 2017.

(2) Computed by multiplying the number of unvested shares by $2.46, the closing market price of our common shares on December 29, 2017 (the last trading day of December).

(3) This stock award vested on February 1, 2018.

(4) This stock award is scheduled to vest in bi-annual installments beginning on June 18, 2018 and ending on December 18, 2020.

(5) This stock award vested 60% on January 10, 2018 and the remaining shares vest monthly through July 10, 2018.

(6) This stock award is scheduled to vest in bi-annual installments beginning on April 5, 2018 and ending on October 5, 2018.

(7) This stock award is scheduled to vest in bi-annual installments beginning on February 9, 2018 and ending on August 9, 2019.

Executive Officer Compensation

Our executive compensation programs are determined by the Compensation Committee, within the scope of the authority delegated to it by our Board of Directors and subject to applicable law. The goals of our program are to attract and retain highly qualified and experienced executives and to provide compensation opportunities that are linked to corporate and individual performance. Decisions by the Compensation Committee on our executive compensation programs are subjective and the result of its business judgment, which is informed by the experiences of its members. The named executive officers do not have any role in determining their own compensation, although the Compensation Committee does consider the recommendations of the Chief Executive Officer in setting compensation levels for the named executive officers other than himself. The primary components of our executive compensation program are base salary, performance bonuses and long-term equity incentive awards. As described in more detail below, the Board approved certain changes to our executive compensation program in December 2017, including certain severance arrangements and those described under "Stay Bonus Agreements" and "Sale Bonus Plan".

Base Salaries. Base salaries are primarily intended to attract and retain highly qualified executives by providing them with fixed, predictable levels of compensation. The named executive officers' salary levels are specified in their employment agreements (other than for Mr. Tassiopoulos who is not a party to an employment agreement with the Company) and are subject to periodic review and adjustment by the Compensation Committee.

Performance Bonuses. In March 2017, the Compensation Committee approved a bonus plan for fiscal 2017. The bonus plan was divided into two bonus periods, with the first period consisting of the first two quarters of 2017 and the second period consisting of the last two quarters of fiscal 2017. The bonus amounts were determined based on our revenue and operating expenses for each bonus period against performance targets established by the Compensation Committee for that period. The Compensation Committee also approved the following target bonuses for the named executive officers participating in the plan (in each case expressed as a percentage of the executive's annual base salary: Mr. Kelly - 100%; Mr. Tassiopoulos - 100%; Mr. Kalbfleisch - 60%; and Ms. Yeh - 20%. The named executive officers' bonuses for fiscal 2017 are reported in the table above.

Long-Term Equity Incentive Awards. Long-term equity incentives are intended to align the named executive officers' interests with those of our shareholders as the ultimate value of these awards depends on the value of the Company's shares. The Company has historically granted equity awards in the form of stock options with an exercise price that is equal to the per-share closing price of our common shares on the grant date. In recent years, restricted stock units have also been granted as provided for under the Company's 2015 Plan. The Compensation Committee believes that stock options are an effective vehicle for aligning the interests of our executives with those of our shareholders as the executive will only realize value on their options if the share price increases during the period between the grant date and the date the stock option is exercised. The stock options and restricted stock units function as a retention incentive for the named executive officers as they typically vest over a multi-year period following the date of grant. Restricted stock units, which are payable in our common shares, also link the interests of the award recipient with those of our shareholders as the potential value of the award is directly linked to the value of our common shares. Restricted stock units were included as part of the equity award mix granted in fiscal 2017 because they serve as a heightened retention incentive (as the awards generally have some value regardless of our stock price performance) and to help manage the potential dilutive impact of our equity awards (as one restricted stock unit generally has a greater grant date fair value than one stock option, so fewer restricted stock units generally have to be granted than if an award of equivalent grant date fair value was granted in the form of stock options). The named executive officers' equity awards are subject to accelerated vesting in certain circumstances under their agreements with the Company described below.

Stay Bonus Agreements. In December 2017, the Board approved stay bonus agreements for each of our named executive officers and certain other key employees. Under these agreements, one-half of the executive's stay bonus will be payable if the executive remains employed with us through a change in control of the Company, and the other one-half of the stay bonus will be payable if the executive remains employed with us for three months after the change in control. If the executive's employment is terminated by the Company without cause or by the executive for good reason (as such terms are defined in the agreement), any portion of the stay bonus that has not previously been paid will be payable on the executive's termination (regardless of whether a change in control has occurred). The aggregate stay bonus opportunity for each of the executive officers is as follows: Mr. Kelly - $800,000; Mr. Kalbfleisch - $268,000; Mr. Tassiopoulos - $330,000; and Ms. Yeh - $268,000. In each case, payment of the stay bonus is contingent upon the executive providing the Company with a release of claims.

Sale Bonus Plan. To provide an additional incentive for our named executive officers and certain other key employees to achieve a sale of the Company, we adopted a sale bonus plan in 2017 that provides for participants to receive a specified percentage of the net consideration from one or more qualifying transactions. For purposes of the plan, a "qualifying transaction" is generally a sale of a majority of the Company's stock or a sale of any of its assets, and the "net consideration" is generally (1) the total proceeds to be paid to the Company or its stockholders in the qualifying transaction, less (2) the Company's net debt at the time of the transaction, less (3) amounts payable by the Company under the stay bonus agreements described above and the Company's other expenses incurred in the transaction. Upon a qualifying transaction, a bonus pool equal to 20% of the net consideration in the transaction is established, with each participant being entitled to receive his or her specified percentage of the bonus pool (subject to the terms and conditions of the plan). The specified percentage of the bonus pool that is currently allocated to each of the executive officers is as follows: Mr. Kelly - 30%; Mr. Kalbfleisch - 20%; Mr. Tassiopoulos - 20%; and Ms. Yeh - 15%. A participant must be employed with the Company at the time of the qualifying transaction (or have been terminated by the Company without cause or resigned for good reason within the period of 120 days prior to the qualifying transaction) to be eligible for a bonus with respect to the qualifying transaction. If a participant resigns (other than for good reason) or otherwise forfeits his or her interest under the bonus plan, the forfeited interest may be regranted by the Board as one or more new awards under the plan or, to the extent not re-granted before the time of a qualifying transaction, would be reallocated to the other participants on a pro-rata basis. Bonuses under the plan would generally be paid in connection with the closing of the qualifying transaction, but may be subject to any deferred payment arrangement (such as an escrow or earn-out provision) that applies to the consideration paid in the transaction to the Company or its stockholders.

Employment, Severance and Change in Control Agreements

Eric L. Kelly. In connection with our acquisition of Overland, we assumed the employment agreement then in effect between Overland and Mr. Kelly, who had been serving as Overland's President and Chief Executive Officer and was appointed our Chairman and Chief Executive Officer, effective December 1, 2014. The agreement provides for Mr. Kelly to earn a base salary of $400,000 and to be eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by our Board of Directors or an authorized committee of our Board of Directors. His annual bonus target is 100% of the greater of $400,000 or his base salary as of the end of the applicable fiscal quarter or year in which the bonus is earned, and he has the opportunity to earn an annual bonus of up to 150% of the target bonus. To the extent that any travel, lodging or auto-expense reimbursements we make to Mr. Kelly are taxable to him, we will provide him with a tax restoration payment so that he will be put in the same after-tax position as if such reimbursements had not been subject to tax. Mr. Kelly's employment agreement automatically renews each year for an additional one-year term. We may unilaterally modify Mr. Kelly's cash compensation at any time, subject to Mr. Kelly's right to terminate his employment for good reason as described below.

Mr. Kelly's employment agreement also provides that if we terminate his employment without cause or if he resigns from employment for good reason (other than in the circumstances contemplated by his retention agreement described below), we will be obligated to pay him an aggregate severance payment equal to the sum of (i) 150% of the greater of his base salary then in effect or his original base salary, (ii) a portion of his target bonus prorated based on the number of days he was employed during the period on which the target bonus is based (such pro-rated target bonus to also be paid if his termination were due to his death or disability), (iii) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (iv) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (iii) above). For these purposes, the terms “cause” and “good reason” are defined in the agreement, and a termination of employment by us without cause includes a termination by us at the end of the term then in effect. The severance payment will be made in equal monthly installments over 18 months in accordance with our regular payroll practices. In addition, Mr. Kelly will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control. The severance benefits described above are contingent upon Mr. Kelly providing us with a general release of all claims.

In addition, in connection with our acquisition of Overland, we also assumed the retention agreement then in effect between Overland and Mr. Kelly. In December 2017, the Board approved an amended and restated version of this agreement with Mr. Kelly. The amended retention agreement provides that if Mr. Kelly’s employment continues through a change in control of the Company (or if his employment is terminated by the Company without cause or he resigns for good reason (as such terms are defined in the agreement) within sixty days prior to the change in control), he will be entitled to a lump sum payment equal to 150% of the sum of his base salary at the time of the consummation of the change of control or his termination date (whichever is higher) and his annual target bonus. Mr. Kelly will also be entitled to accelerated vesting of his then-outstanding and unvested stock options and other equity-based awards granted by the Company, and he will be permitted to exercise vested stock options for one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the option or upon a change of control. In addition, if his employment is terminated by the Company without cause or he resigns for good reason within the sixty-day period before a change in control or any time after the change in control, Mr. Kelly will be entitled to a lump sum payment of (i) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (ii) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (i) above). If any portion of any payment under Mr. Kelly’s retention agreement would constitute an “excess parachute payment” within the meaning of Section 280G of the U.S. Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the U.S. Internal Revenue Code if such reduction would result in a greater benefit for Mr. Kelly on an after-tax basis. The benefits provided under Mr. Kelly’s retention agreement are contingent upon him providing us a general release of claims. In no event will Mr. Kelly be entitled to both the benefits provided under his retention agreement and the severance benefits provided under his employment agreement.

Kurt L. Kalbfleisch. In connection with our acquisition of Overland, we assumed the employment agreement then in effect between Overland and Mr. Kalbfleisch, who had been serving as Overland’s Senior Vice President and Chief Financial Officer and was appointed our Senior Vice President and Chief Financial Officer, effective December 1, 2014. In December 2017, the Board approved an amended and restated version of this agreement with Mr. Kalbfleisch. The restated agreement provides for Mr. Kalbfleisch to earn a base salary of $300,000. Mr. Kalbfleisch’s employment agreement automatically renews each year for an additional one-year term. We may unilaterally modify Mr. Kalbfleisch’s cash compensation at any time, subject to Mr. Kalbfleisch’s right to terminate his employment for good reason. If we terminate Mr. Kalbfleisch’s employment without cause or he resigns his employment for good reason (as such terms are defined in the agreement), in either case more than sixty days before a change in control of the Company, he will be entitled to an aggregate severance payment equal to the sum of (i) the greater of his annual base salary then in effect or his original base salary of $300,000, (ii) a portion of any target bonus prorated based on the number of days he was employed during the period on which the target bonus is based (such pro-rated target bonus to also be paid if his termination were due to his death or disability), (iii) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination, and (iv) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 12 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (iii) above). The severance payment will be made in equal monthly installments over the 12 months following termination of employment. In addition, Mr. Kalbfleisch will be entitled to accelerated vesting of any unvested portion of his then outstanding stock options and other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control.

Mr. Kalbfleisch's restated employment agreement also provides that if his employment continues through a change in control of the Company (or if his employment is terminated by the Company without cause or he resigns for good reason (as such terms are defined in the agreement) within sixty days prior to the change in control), he will be entitled to a lump sum payment equal to 150% of his base salary then in effect. Mr. Kalbfleisch will also be entitled to accelerated vesting of his then-outstanding and unvested stock options and other equity-based awards granted by the Company, and he will be permitted to exercise vested stock options for one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the option or upon a change of control. In addition, if his employment is terminated by the Company without cause or he resigns for good reason within the sixty-day period before a change in control or any time after the change in control, Mr. Kalbfleisch will be entitled to a lump sum payment of (i) an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination, and (ii) the estimated amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 12 months following his termination (reduced by the amount of any payment for COBRA premiums as described in clause (i) above). If any payment under Mr. Kalbfleisch's employment agreement would constitute an "excess parachute payment" within the meaning of Section 280G of the U.S. Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the U.S. Internal Revenue Code if such reduction would result in a greater benefit for Mr. Kalbfleisch on an after-tax basis. In each case, the severance and change in control benefits provided under Mr. Kalbfleisch's employment agreement are contingent upon him providing us with a general release of all claims.

Peter Tassiopoulos. In December 2017, the Board approved certain compensation arrangements for Mr. Tassiopoulos. Pursuant to these arrangements, if Mr. Tassiopoulos' employment continues through a change in control of the Company (or if his employment is terminated by the Company without cause or he resigns for good reason (as such terms are defined in the agreement) prior to the change in control), he will be entitled to receive a lump sum payment of $360,000, and his outstanding and unvested equity-based awards granted by the Company will fully accelerate. In addition, if at any time his employment is terminated by the Company without cause or he resigns for good reason, he will be entitled to receive an amount equal to the estimated premiums he would be required to pay to continue health insurance coverage under our insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination. The benefits described above are contingent upon Mr. Tassiopoulos providing us with a general release of all claims and the entry into a settlement and release agreement by Mr. Tassiopoulos with respect to his prior bonus and severance arrangements with the Company.

Jenny C. Yeh. In December 2017, the Board approved a retention agreement with Ms. Yeh that amended and restated her prior severance agreement with the Company. Under her retention agreement, if Ms. Yeh's employment continues through a change in control of the Company (or if her employment is terminated by the Company without cause or she resigns for good reason (as such terms are defined in the agreement) prior to the change in control), she will be entitled to receive a lump sum payment in an amount equal to 12 months of her base salary, and her outstanding and unvested equity-based awards granted by the Company will fully accelerate. In addition, if at any time her employment is terminated by the Company without cause or she resigns for good reason, she will be entitled to receive an amount equal to the estimated premiums she would be required to pay to continue health insurance coverage under our insurance plans for herself and her eligible dependents under COBRA for 12 months following the date of her termination. The benefits described above are contingent upon Ms. Yeh providing us with a general release of all claims.

2015 Performance Incentive Plan

Employees, officers, directors and consultants that provide services to us or one of our subsidiaries may be selected to receive awards under the 2015 Plan. Our Board of Directors has broad authority to administer the 2015 Plan, including the authority to select participants and determine the types of awards that they are to receive, determine the grants levels, vesting and other terms and conditions of awards, and construe and interpret the terms of the 2015 Plan and any agreements relating to the plan.

A total of 2,066,747 common shares are authorized for issuance with respect to awards granted under the 2015 Plan (not including shares subject to terminated awards under our Second Amended and Restated Stock Option Plan that become available for issuance under the 2015 Plan). Awards under the 2015 Plan may be in the form of incentive or nonqualified stock options, stock appreciation rights, stock bonuses, restricted stock, stock units and other forms of awards including cash awards. Awards under the plan generally will not be transferable other than by will or the laws of descent and distribution, except that the plan administrator may authorize certain transfers.

The number and type of shares available under the 2015 Plan and any outstanding awards, as well as the exercise or purchase prices of awards, are subject to customary adjustments in the event of stock splits, stock dividends and certain other corporate transactions. Generally, and subject to limited exceptions set forth in the 2015 Plan, if we dissolve or undergo certain corporate transactions such as a merger, business combination or other reorganization, or a sale of all or substantially all of our assets, all awards then-outstanding under the 2015 Plan will become fully vested or paid, as applicable, and will terminate or be terminated in such circumstances, unless the Board of Directors provides for the assumption, substitution or other continuation of the award. The Board of Directors also has the discretion to establish other change in control provisions with respect to awards granted under the 2015 Plan.

The Board of Directors may amend or terminate the 2015 Plan at any time, but no such action will affect any outstanding award in any manner materially adverse to a participant without the consent of the participant. Plan amendments will be submitted to stockholders for their approval as required by applicable law or deemed advisable by the Board of Directors. If not earlier terminated by the Board of Directors, the 2015 Plan will terminate on May 14, 2025. The 2015 Plan is not exclusive - the Board of Directors may grant stock and performance incentives or other compensation, in stock or cash, under other plans or authority.

401(k) Plan

Our On-Track 401(k) Savings Plan covers all of our U.S. employees, provided they meet the requirements of the plan. Our 401(k) plan is intended to qualify under Section 401 of the Internal Revenue Code so that employee contributions and income earned on such contributions are not taxable to employees until withdrawn. Employees may elect to defer up to 60% of their eligible compensation (not to exceed the statutorily prescribed annual limit) in the form of elective deferral contributions to our 401(k) plan. However, our named executive officers qualify as highly compensated employees and may only elect to defer up to 8.5% of their eligible compensation (not to exceed the statutorily prescribed annual limit) in the form of elective deferral contributions to our 401(k) plan. Our 401(k) plan also has a catch up contribution feature for employees aged 50 or older (including those who qualify as highly compensated employees) who can defer amounts over the statutory limit that applies to all other employees. Our 401(k) Plan permits but does not require matching contributions by us on behalf of participants.

Compensation of Directors

The following table provides compensation information for the members of our Board of Directors during 2017 who were not employed by us or any of our subsidiaries ("non-employee directors"). Eric Kelly and Peter Tassiopoulos are each named executive officers who also served on the Board of Directors during 2017. The 2017 compensation information for each of these individuals is presented in the Summary Compensation Table above and they were not entitled to any additional compensation for their service on the Board during fiscal 2017.

Name	Fees Earned ($)	Stock Awards(1) ($)	All Other Compensation ($)	Total ($)
Peter Ashkin(2)	19,670	—	—	19,670
Cheemin Bo-Linn(3)	83,044	77,200	—	160,244
Glenn Bowman(4)	12,000	—	—	12,000
Vivekanand Mahadevan	97,742	—	—	97,742
Duncan McEwan(5)	73,456	40,631	—	114,087

(1) At the end of fiscal 2017, the number of shares subject to outstanding restricted stock units for the non-employee directors were as follows: Dr. Bo-Linn - 16,000: Mr. McEwan - 8,421; Mr. Mahadevan - none; Mr. Ashkin - none; and Mr. Bowman - none.

(2) Mr. Ashkin resigned from our Board of Directors on June 27 2017.

(3) Dr. Bo-Linn joined our Board on April 17, 2017, and was awarded a restricted stock unit for 16,000 shares on May 10, 2017. The RSU was valued at $4.825 per share on the grant date (the closing market price on NASDAQ for one of our common shares on that date) and vests in full on the one-year anniversary of the grant date.

(4) Mr. Bowman resigned from our Board of Directors on April 13, 2017.

(5) Mr. McEwan joined our Board on May 10, 2017, and was awarded a restricted stock unit for 8,421 shares when he joined our Board. The RSU was valued at $4.825 per share on the grant date (the closing market price on NASDAQ for one of our common shares on that date) and vest in full on the one-year anniversary of the grant date.

The non-employee board members are paid $10,000 per quarter for their service on the Board except that the Chair of the Audit Committee and the Lead Board member are paid $12,500 per quarter for their service on the Board. During 2017, the Board also granted restricted stock units to certain non-employee directors as described in the notes to the table above. The Board retains complete discretion to adopt or modify our programs for providing cash and/or equity-based compensation to our non-employee directors as it deems appropriate from time to time.

In August 2017, the Board formed a special committee (the "Special Committee") to evaluate strategic options for the Company and appointed Messrs., Mahadevan and McEwan, and Dr. Bo-Linn to the Special Committee. Each member is paid $10,000 per month for their service on the Special Committee. Beginning in January 2018, the $10,000 per month is paid 50% in cash and 50% in common shares.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

Equity Compensation Plan Information

The following table provides information about our equity compensation plans as of the last day of fiscal 2017, unless otherwise footnoted below. The Company maintains its 2012 Option Plan ("2012 Plan"), 2015 Performance Incentive Plan ("2015 Plan"), and 2015 Employee Stock Purchase Plan ("ESPP"), which have been approved by the Company's shareholders. No new awards may be granted under the 2012 Plan.

Plan Category	(a) Number of Common Shares to be Issued Upon Exercise of Outstanding Options and Rights	(b) Weighted-average Exercise Price of Outstanding Options and Rights[1]	(c) Number of Common Shares Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Shares Reflected in Column (a))
Equity compensation plans approved by our shareholders[2]	1,133,276	$31.40	1,071,428
Equity compensation plans not approved by our shareholders[3]	58,856	—	—
Total	1,192,132		1,071,428

(1) The weighted-average exercise prices do not reflect shares subject to outstanding awards of restricted stock units.

(2) Of the aggregate number of Shares that are to be issued upon exercise of outstanding options and rights as reported in column (a), 1,046,576 were subject to outstanding awards under the 2015 Plan and 86,700 were subject to outstanding awards under the 2012 Plan as of December 31, 2017. This table does not include the equity awards we assumed in connection with our acquisition of Overland in December 2014. As of December 31, 2017, an additional 1,246 of our common shares were subject to outstanding stock options we assumed in the acquisition (at a weighted average exercise price of $267.70 per share). Of the aggregate number of shares that remained available for future issuance reported in column (c), 771,428 were available under the 2015 Plan and 300,000 were available under the ESPP. The 2015 Plan permits the granting of the following types of incentive awards: stock options, stock appreciation rights, restricted shares, and stock units.

(3) These figures represent stock units (the "Inducement Stock Units") granted to certain employees as an inducement to their commencing employment with us as provided under the Nasdaq listing rules. The Inducement Stock Units are generally subject to the same terms as stock units granted under the 2015 Plan. The Inducement Stock Units vest over three years and are subject to earlier termination in the case of termination of the employee's employment or a change in control of the Company.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth certain information with respect to the beneficial ownership of our common shares as of March 16, 2018 by each shareholder known to us to beneficially own more than 5% of our common shares, each director, and each executive officer named in the Summary Compensation table above, and all directors and executive officers of Sphere 3D as a group:

Beneficial Owner[(1)]	Number of Shares Beneficially Owned[(2)]		Percent[(3)]
MF Ventures, LLC	2,294,569	(4)	24.5%
201 Spear Street, 14th Floor			
San Francisco, CA 94105			
Cyrus Capital Partners, L.P.	780,648	(5)	8.3%
65 East 55 Street, 35th Floor			
New York, NY 10022			
Eric Kelly	92,584	(6)	1.0%
Kurt L. Kalbfleisch	31,612	(7)	*
Peter Tassiopoulos	8,000	(8)	*
Jenny Yeh	5,599	(9)	*
Cheemin Bo-Linn	16,000	(10)	*
Duncan McEwan	8,421	(11)	*
Vivekanand Mahadevan	5,244	(12)	*
Directors and executive officers as a group (7 persons)	167,460	(13)	1.8%

* Less than 1%

(1) Except as otherwise indicated, the persons named in this table have sole voting and investment power with respect to all common shares shown as beneficially owned by them. Unless otherwise noted, the address for each beneficial owner is: c/o Sphere 3D Corp., 125 South Market Street, San Jose, CA 95113.

(2) Under the rules of the Securities and Exchange Commission, a person is deemed to be the beneficial owner of shares that can be acquired by such person within 60 days upon the exercise of options or warrants and vesting of stock awards.

(3) Calculated on the basis of 9,051,408 shares of common stock outstanding as of March 16, 2018, provided that any additional shares of common stock that a stockholder has the right to acquire within 60 days after March 16, 2018 are deemed to be outstanding for the purpose of calculating that stockholder’s percentage beneficial ownership

(4) Information was obtained from MF Ventures, LLC and Company records. These shares include the right to acquire 300,000 shares upon exercise of warrants. MF Ventures, LLC is a limited liability company formed to make one or more investments in business ventures or activities deemed appropriate by Victor B. MacFarlane, as Manager of MF Ventures, LLC. Mr. MacFarlane as Manager of MF Ventures, LLC and Thaderine D. MacFarlane as a controlling member of MF Ventures, LLC share voting power over the shares of common stock held by MF Ventures, LLC.

(5) Information was obtained from Cyrus Capital Partners, L.P. pursuant to Schedule 13D/A filed February 23, 2018. Certain funds and affiliates managed by Cyrus, directly and indirectly own these shares (the "Cyrus Group"). These shares include 44,000 Shares issuable upon exercise of warrants and 326,667 Shares issuable upon conversion of a debenture. The Cyrus Group is comprised of Cyrus Capital Partners, L.P., a Delaware limited partnership, ("Cyrus"), Crescent 1, L.P., a Delaware limited partnership ("Crescent"), CRS Master Fund, L.P., a Cayman Islands exempted limited partnership, ("CRS"), Cyrus Opportunities Master Fund II, Ltd., a Cayman Islands exempted limited company, ("Cyrus Opportunities)", Cyrus Select Opportunities Master Fund, Ltd., a Cayman Islands exempted limited company, ("Cyrus Select"), Cyrus Capital Partners GP, L.L.C., a Delaware limited partnership, ("Cyrus GP"), Cyrus Capital Advisors, L.L.C., a Delaware limited liability company, ("Cyrus Advisors"), and Mr. Stephen C. Freidheim. Each of Crescent, CRS, Cyrus Opportunities and Cyrus Select, or collectively the Cyrus Funds, are private investment funds engaged in the business of acquiring, holding and disposing of investments in various companies. Cyrus is the investment manager of each of the Cyrus Funds. Cyrus GP is the general partner of Cyrus. Cyrus Advisors is the general partner of Crescent and CRS. Mr. Freidheim is the managing member of Cyrus GP and Cyrus Advisors and is the Chief Investment Officer of Cyrus. Crescent, CRS, Cyrus Opportunities, Cyrus Select and Mr. Freidheim have entered into an investment management agreement with Cyrus giving Cyrus full voting and disposition power over the shares of common stock held by the Cyrus Group.

(6) These shares include the right to acquire shares upon exercise of 40,600 stock options.

(7) These shares include the right to acquire shares upon exercise of 4,000 stock options and the payment of 4,266 restricted stock units.

(8) These shares include the right to acquire shares upon exercise of 4,000 stock options.

(9) These shares include the right to acquire shares upon the payment of 5,599 restricted stock units.

(10) These shares include the right to acquire shares upon the payment of 16,000 restricted stock units.

(11) These shares include the right to acquire shares upon the payment of 8,421 restricted stock units.

(12) These shares include the right to acquire shares upon exercise of 111 stock options.

(13) These shares include the right to acquire shares upon exercise of 48,711 stock options and the payment of 34,286 restricted stock units beneficially owned by our directors and executive officers.

Item 13. Certain Relationships and Related Transactions, and Directors Independence

Warrant Exchange Agreement. On March 16, 2018, the Company entered into a warrant exchange agreement (the "Exchange Agreements"), in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 1,430,998 common shares in exchange for the surrender and cancellation of the March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the Exchange Agreements became null and void. MF Ventures, LLC, participated in the Exchange by acquiring 299,999 common shares in exchange for a warrant to purchase 272,727 common shares.

Purchase Agreement. On February 20, 2018, the Company, Overland, and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, the Company's Chief Executive Officer and Chairman of the Board of Directors (the "Purchaser") entered into a share purchase agreement (the "Purchase Agreement"), pursuant to which, among other things, and subject to certain closing conditions, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million (the "Purchase Price"), subject to working capital adjustments (the "Share Purchase"). The net proceeds from the Share Purchase will be used to repay: (i) the Company's outstanding obligations under its Credit Agreement with Opus Bank; (ii) its outstanding obligations under the related party convertible note with FBC Holdings S.a.r.l. ("FBC Holdings"); and (iii) its related party subordinated promissory note with MF Ventures, LLC. The Special Committee of the Board of Directors of the Company and the Board of Directors of the Company (with Eric Kelly recusing) unanimously approved the entry into the Purchase Agreement by the Company. See *Note 1 - Organization and Business* for additional details.

Private Placement. In August 2017, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company issued (i) 600,000 common shares, of which 395,000 common shares were issued to related parties, and (ii) warrants for the purchase of up to 600,000 common shares, of which 395,000 warrants were issued to related parties, in a private placement in exchange for a cash payment of $3.0 million. The purchase price was $5.00 per common share and warrant to purchase one common share, and the exercise price of the warrants is $5.25 per warrant share. The warrants were subject to certain anti-dilution adjustments through December 2017.

Related Party Warrant Exchange Agreement. In July 2017, the Company entered into amended and restated warrant agreements with certain holders of warrants previously issued in March 2016 (the "Amended March 2016 Warrant") and between December 2016 and March 2017 (the "Amended March 2017 Warrants" and together with the Amended March 2016 Warrant, the "Amended and Restated Warrants"). Pursuant to the amended and restated warrant agreements, the Company issued an aggregate of 1,617,917 common shares, of which 1,315,385 common shares were issued to related parties, in exchange for the cancellation of such warrants. Immediately after the exchange, the amended and restated warrant agreements became null and void.

Registered Direct Offering and Concurrent Private Placement. On March 24, 2017, the Company entered into a securities purchase agreement with certain investors party thereto, pursuant to which the Company issued to the investors, in the aggregate, 818,182 of the Company's common shares for gross proceeds of $4.5 million. The security purchase agreement also provided for the concurrent private placement of warrants exercisable to purchase up to 867,272 common shares. Each warrant had an exercise price of $7.50 per warrant share. MF Ventures, LLC, a related party, participated in the offering by acquiring 181,818 common shares and warrants to purchase 181,818 shares for gross proceeds of $1.0 million. In August 2017, the Company issued additional common shares, which triggered a price adjustment for the March 2017 warrants from $7.50 to $5.00 and the Company issued, in the aggregate, additional warrants exercisable to purchase up to 433,638 common shares, of which MF Ventures, LLC received 90,909 warrants exercisable to purchase common shares.

Private Placement. Between December 2016 and March 16, 2017, the Company completed a private placement and issued a total of 725,599 "Units" at a purchase price of $7.50 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants. The Company received gross proceeds of $5.4 million in connection with the sale of the Units. The first series of warrants was exercisable to purchase 725,599 common shares in the aggregate and has an exercise price of $10.00 per share, a one-year term, and was exercisable in whole or in part at any time prior to expiration. The second series of warrants was exercisable for 725,599 common shares in the aggregate and has an exercise price of $13.75 per share, a five-year term, and was exercisable in whole or in part at any time prior to expiration. MF Ventures, LLC, participated in the private placements by acquiring 333,333 common shares and warrants to purchase 666,666 shares. Lynn Factor and Sheldon Inwentash, a married couple who beneficially owned, directly or indirectly, securities of the Company carrying more than 5% of the voting rights attached to the outstanding voting securities of the Company (on a partially-diluted basis) during the 2017 fiscal year, participated in the private placements by acquiring 213,000 common shares and warrants to purchase 426,000 shares. An additional 28,000 common shares and warrants to purchase 56,000 shares were acquired by ThreeD Capital Inc. Mr. Inwentash is the Chief Executive Officer of ThreeD Capital Inc. As of December 31, 2017, Lynn Factor and Sheldon Inwentash no longer have a significant direct or indirect ownership of the Company and are no longer are classified as a related party.

Related Party Convertible Notes. In December 2014, in connection with the acquisition of Overland, the existing debt of Overland and the remaining debt of the Company were amended and restated into a $19.5 million convertible note held by FBC Holdings. In April 2016, the Company modified its convertible note with FBC Holdings, pursuant to which the holder made an additional advance and principal amount under the convertible note amount was increased to $24.5 million. The convertible note is scheduled to mature March 31, 2018 and bears interest at an 8.0% simple annual interest rate, payable semi-annually. The obligations under the convertible note are secured by substantially all assets of the Company. At December 31, 2017 and 2016, the Company had $24.4 million and $24.2 million, net of unamortized debt costs of $0.1 million and $0.3 million, respectively, outstanding on the convertible note. In 2017, we issued 586,298 common shares for the payment of interest expense on our convertible note. For the years ended December 31, 2017 and 2016, interest expense, including amortization of debt costs, on the convertible note was $2.2 million and $2.1 million, respectively.

Related Party Loans. In December 2017, the Company entered into a $2.0 million subordinated promissory note with MF Ventures, LLC, a related party. The promissory note is subordinate to the Company's Opus Bank Credit Agreement and FBC Holdings indebtedness and has a maturity date of the earliest of: (i) December 11, 2020; (ii) immediately after repayment in full of the Opus Bank Credit Agreement and the FBC Holdings indebtedness; or (iii) immediately after the Company's refinancing of both the Opus Bank Credit Agreement and the FBC Holdings indebtedness. The promissory note may be prepaid at any time by the Company; including any accrued and unpaid interest and a $0.3 million prepayment penalty. The promissory note bears interest at a 12.5% simple annual interest rate, payable quarterly in arrears. Interest shall be paid in kind by increasing the principal amount of the note on each quarterly interest payment date.

In September 2016, the Company entered into a $2.5 million term loan agreement with FBC Holdings. The term loan has a maturity date of January 31, 2018 and bears interest at a 20.0% simple annual interest rate, payable monthly in arrears. Monthly payments of principal on the term loan begin on January 31, 2017, in 13 equal installments. At December 31, 2017 and 2016, the outstanding balance of the term loan was $0.2 million and $2.5 million, respectively. For the years ended December 31, 2017 and 2016, interest expense, including amortization of debt costs, on the term loan was $0.3 million and $0.1 million, respectively. In January 2018, the FBC Holdings term loan was paid in full per the term loan agreement.

Indemnification of Our Executive Officers and Directors

In accordance with the by-laws of the Company, directors and officers are each indemnified by the Company against all liability and costs arising out of any action or suit against them from the execution of their duties, provided that they have carried out their duties honestly and in good faith with a view to the best interests of the Company and have otherwise complied with the provisions of applicable corporate law.

Director Independence

The Board has determined that the following current directors are independent within the meaning of NI 58-101 and NI 52-110 and NASDAQ Marketplace Rule 5605(a)(2): Cheemin Bo-Linn, Vivekanand Mahadevan and Duncan McEwan. The Board has determined that Eric L. Kelly and Peter Tassiopoulos are not independent because of their positions as officers of the Company (holding the position of Chief Executive Officer and President of the Company, respectively). As a result, the Board is currently comprised of three independent directors and a majority of independent directors.

Item 14. Principal Accounting Fees and Services

The aggregate fees incurred by the Company’s current external auditor, Moss Adams, in each of the last two years for audit and other fees are as follows (in thousands):

	2017	2016
Audit fees[1]	$ 525	$ 514
Audit related fees[2]	59	10
Tax fees[3]	1	9
All other fees[4]	—	—
	$ 585	$ 533

(1) Audit fees consist of fees billed for professional services rendered in connection with the audit of our annual consolidated financial statements, which were provided in connection with statutory and regulatory filings or engagements.

(2) Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements, and are not reported under audit fees.

(3) Tax fees consist of fees billed for professional services rendered for IRS Section 302 net operating loss limitation study.

(4) All other fees consist of fees for products and services other than the services reported above. There were no such services rendered to us.

Pre-Approval Policies and Procedures

The Audit Committee has the authority to pre-approve all non-audit services to be provided to the Company by its independent auditor. All services provided by Moss Adams during the years 2017 and 2016 were pre-approved by the Audit Committee.

PART IV

Item 15. Exhibits, Financial Statements Schedules

(a) Documents filed as part of this report.

(1) Financial Statements.

Report of Independent Registered Public Accounting Firm	F-1
Consolidated Balance Sheets as of December 31, 2017 and 2016	F-2
Consolidated Statements of Operations for the Years Ended December 31, 2017 and 2016	F-3
Consolidated Statements of Comprehensive Loss for the Years Ended December 31, 2017 and 2016	F-4
Consolidated Statements of Cash Flows for the Years Ended December 31, 2017 and 2016	F-5
Consolidated Statements of Shareholders' Equity for the Years Ended December 31, 2017 and 2016	F-7
Notes to Consolidated Financial Statements	F-8

(2) Financial Statement Schedules.

Schedules not listed above have been omitted because they are not applicable or are not required or the information required to be set forth therein is included in the consolidated financial statements or notes thereto.

(3) Exhibits.

List of Exhibits required by Item 601 of Regulation S-K. See part (b) below.

(b) Exhibits.

Exhibit Number	Description	Filed Herewith	Incorporated by Reference Form	File No.	Date Filed
2.1	Asset Purchase Agreement dated August 10, 2015 between Imation Corp., Overland Storage, Inc. and Sphere 3D Corp.		6-K	001-36532	8/14/2015
2.2	Share Purchase Agreement dated February 20, 2018 between Sphere 3D Corp., Overland Storage, Inc., and Silicon Valley Technology Partners LLC		8-K	001-36532	2/21/2018
3.1	Certificate and Articles of Amalgamation		6-K	001-36532	3/25/2015
3.2	Certificate of Amendment to the Articles of Amalgamation of the Company		6-K	001-36532	7/17/2017
3.3	By-Law No. 1, as Amended		6-K	001-36532	7/17/2017
3.4	By-Law No. 2		6-K	001-36532	5/12/2017
4.1	Specimen certificate evidencing Common Shares		F-3	333-210735	4/13/2016
4.2	Form of Warrant		6-K	001-36532	6/2/2015
4.3	Form of Warrant		6-K	001-36532	10/7/2015
4.4	Form of Canadian Warrant		6-K	001-36532	12/2/2015
4.5	Form of Fund Warrant		6-K	001-36532	12/2/2015
4.6	Warrant dated March 25, 2016, issued to MF Ventures, LLC		40-F	001-36532	3/30/2016
4.7	Form of Warrant		6-K	001-36532	3/24/2017
4.8	Replacement Warrant to Purchase common shares dated December 30, 2016 issued by the Company to Opus Bank		6-K	001-36532	3/24/2017
4.9	First Additional Warrant to Purchase common shares dated March 12, 2017 issued by the Company to Opus Bank		6-K	001-36532	3/24/2017
4.10	Second Additional Warrant to Purchase common shares dated March 12, 2017 issued by the Company to Opus Bank		6-K	001-36532	3/24/2017
4.11	Form of One-Year Warrant Agreement		20-F	001-36532	3/31/2017
4.12	Form of Five-Year Warrant Agreement		20-F	001-36532	3/31/2017
4.13	Form of Amended One and Five -Year Warrant Agreement		6-K	001-36532	7/20/2017
4.14	Amended March 25, 2016 Warrant issued to MF Ventures, LCC		6-K	001-36532	7/20/2017
4.15	Form of Warrant Agreement		6-K	001-36532	8/15/2017
10.1	Voting Agreements each dated July 15, 2013 between Eric L. Kelly and various shareholders of the Company		40-F	000-55232	6/27/2014
10.2	Board Nomination Rights Agreement dated July 15, 2013 between Eric L. Kelly and the Company		40-F	000-55232	6/27/2014

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.3	8% Senior Secured Convertible Debenture dated December 1, 2014 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	12/16/2014
10.4	First Amendment to 8% Senior Secured Convertible Debenture dated November 30, 2015 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	12/2/2015
10.5	Second Amendment to 8% Senior Secured Convertible Debenture dated April 6, 2016 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	4/7/2016
10.6	Revolving Credit Agreement dated December 30, 2014 between the Company, Overland Storage, Inc. and FBC Holdings S.A.R.L.		6-K	001-36532	1/22/2015
10.7	First Amendment to Revolving Credit Agreement dated July 10, 2015 between the Company, Overland Storage, Inc. and FBC Holdings S.A.R.L.		6-K	001-36532	7/31/2015
10.8	Form of Purchase Agreement		6-K	001-36532	6/2/2015
10.9	Form of Registration Rights Agreement		6-K	001-36532	6/2/2015
10.10	Form of Subscription Agreement		6-K	001-36532	10/7/2015
10.11	Form of Subscription Agreement		6-K	001-36532	12/2/2015
10.12	Form of Securities Purchase Agreement		6-K	001-36532	12/2/2015
10.13	Warrant Exchange Agreement, dated March 25, 2016, by and between the Company and MF Ventures, LLC		40-F	001-36532	3/30/2016
10.14	Form of Securities Purchase Agreement		6-K	001-36532	3/24/2017
10.15	Form of Leak Out Agreement		6-K	001-36532	3/24/2017
10.16	Form of Registration Rights Agreement		6-K	001-36532	3/24/2017
10.17	Placement Agency Agreement dated March 24, 2017 between the Company and Roth Capital Partners, LLC		6-K	001-36532	3/24/2017
10.18	Form of Lock-Up Agreement		6-K	001-36532	3/24/2017
10.19	Form of Stock Purchase Agreement		20-F	001-36532	3/31/2017
10.20	Registration Rights Agreement		6-K	001-36532	8/15/2017
10.21	Form of Securities Purchase Agreement dated August 11, 2017		6-K	001-36532	8/15/2017
10.22*	Credit Agreement dated April 6, 2016 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	4/21/2016
10.23*	Consent, Waiver, Reaffirmation and Amendment Number One to Credit Agreement dated December 30, 2016 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K/A	001-36532	6/19/2017
10.24	Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation dated March 12, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K/A	001-36532	6/19/2017

Exhibit Number	Description	Filed Herewith	Incorporated by Reference Form	File No.	Date Filed
10.25	Third Amendment to Credit Agreement dated March 22, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K/A	001-36532	6/19/2017
10.26	Amendment Number Four to Credit Agreement and Reaffirmation dated April 28, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	6/19/2017
10.27	Amendment Number Five to Credit Agreement and Reaffirmation dated June 10, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	6/19/2017
10.28	Amendment Number Six to Credit Agreement, Amendment Number Two to Amendment Number 1, Waiver and Reaffirmation dated June 30, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	7/28/2017
10.29	Amendment Number Seven to Credit Agreement, Waiver and Reaffirmation dated September 20, 2017 between Overland Storage, Inc., Tandberg Data Gmbh and Opus Bank		6-K	001-36532	9/21/2017
10.30	Term Loan Agreement dated September 16, 2016 between the Company and FBC Holdings S.A.R.L.		6-K	001-36532	3/24/2017
10.31	Subordinated Promissory Note Purchase Agreement dated December 11, 2017 between Overland Storage, Inc. and MF Ventures, LLC		6-K	001-36532	12/15/2017
10.32	Subordinated Promissory Note dated December 11, 2017 between Overland Storage, Inc. and MF Ventures, LLC		6-K	001-36532	12/15/2017
10.33	San Diego, California Headquarters Facility Lease dated October 12, 2000 between the Company and LBA-VIF One, LLC		10-Q	000-22071	2/14/2001
10.34	First Amendment to Lease dated January 18, 2001 between Overland Storage, Inc. and LBA Overland, LLC, (as successor-in-interest to LBA-VIF One, LLC)		10-K	000-22071	9/28/2001
10.35	Second Amendment to Lease dated July 1, 2010 between Overland Storage, Inc. between the Company and LBA Overland, LLC (as successor-in-interest to LBA-VIF One, LLC)		10-K	000-22071	9/28/2001
10.36	Third Amendment to Lease dated July 1, 2010 between the Company and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC		10-K	000-22071	9/24/2010
10.37	Fourth Amendment to Lease dated October 15, 2013 between the Company and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC		10-Q	000-22071	2/13/2014
10.38	Fifth Amendment to Lease dated December 8, 2015 between the Company and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC		20-F	001-36532	3/31/2017

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.39	San Jose, California Headquarters Office Lease dated February 9, 2010 between Overland Storage, Inc. and Park Center Plaza Investors, L.P.		20-F	001-36532	3/31/2017
10.40	First Amendment to San Jose, California Headquarters Office Lease dated March 22, 2017 between Sphere 3D Corp. and Park Center Plaza Investors, L.P.		20-F	001-36532	3/31/2017
10.41	Lease Revenue Contract dated May 19, 2016 between Guangzhou Tandberg Electronic Components Co., Ltd. And Guangzhu Shi Panyu Tongxing Paper Products Co., Ltd.		20-F	001-36532	3/31/2017
10.42	Sphere 3D Second Amended and Restated Stock Option Plan		F-4	333-197569	7/23/2014
10.43	Sphere 3D Corp. 2015 Performance Incentive Plan, as amended		S-8	333-214605	1/29/2018
10.44	Form of Inducement Restricted Stock Unit Agreement		S-8	333-209251	2/1/2016
10.45	Form of Executive Inducement Restricted Stock Unit Agreement		S-8	333-209251	2/1/2016
10.46	Sphere 3D Corp. Employee Stock Purchase Plan, as amended		S-8	333-205236	1/29/2018
10.47	Employment Agreement between Overland Storage, Inc. and Eric Kelly dated August 3, 2011		8-K	000-22071	8/4/2011
10.48+	Amended and Restated Retention Agreement between Sphere 3D Corp. and Eric Kelly dated December 18, 2017	X			
10.49+	Amended and Restated Employment Agreement between Sphere 3D Corp. and Kurt Kalbfleisch dated December 18, 2017	X			
10.50+	Offer of Employment Letter between Sphere 3D Corp. and Jenny Yeh dated September 24, 2015	X			
10.51+	Retention Agreement between Sphere 3D Corp. and Jenny Yeh dated December 18, 2017	X			
10.52+	Form of Stay Bonus Letter Agreement dated December 18, 2017 between Sphere 3D Corp. and Eric Kelly, Kurt Kalbfleisch, Jenny Yeh and Peter Tassiopoulos	X			
10.53+	Sale Bonus Plan dated December 18, 2017 and Form of Award Agreement between Sphere 3D Corp. and Eric Kelly, Kurt Kalbfleisch, Jenny Yeh and Peter Tassiopoulos	X			
10.54+	Form of Restricted Stock Unit Agreement dated December 18, 2017 between Sphere 3D Corp. and Eric Kelly, Kurt Kalbfleisch and Jenny Yeh	X			
10.55+	Form of RSU Amendment Letter between Sphere 3D Corp. and Cheemin Bo-Linn and Duncan McEwan dated December 18, 2017	X			
10.56+	Retention Agreement between Sphere 3D Corp. and Peter Tassiopoulos dated December 18, 2017	X			
10.57+	Form of Executive Stock Option Agreement	X			

Exhibit Number	Description	Filed Herewith	Incorporated by Reference		
			Form	File No.	Date Filed
10.58	Letter from Opus Bank to Overland Storage, Inc. dated November 30, 2017 re consent re extension of milestone under Credit Agreement and Amendment to Credit Agreement	X			
10.59	Plano, Texas Lease Agreement dated March 25, 2016 between Unified ConneXions, Inc. and Prologis TLF (Dallas), LLC	X			
14.1	Code of Business Conduct and Ethics Policy		6-K	001-36532	4/1/2015
21.1	Subsidiaries of Registrant	X			
23.1	Consent of Independent Registered Public Accounting Firm	X			
31.1	Certification of CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
31.2	Certification of CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	X			
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	X			
101.INS	XBRL Instance Document	X			
101.SCH	XBRL Taxonomy Extension Schema	X			
101.CAL	XBRL Taxonomy Extension Calculation Linkbase	X			
101.DEF	XBRL Taxonomy Extension Definition Linkbase	X			
101.LAB	XBRL Taxonomy Extension Label Linkbase	X			
101.PRE	XBRL Taxonomy Presentation Linkbase	X			

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment.

+ Management contract or compensation plan or arrangement.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Sphere 3D Corp.

/s/ Eric L. Kelly
Eric L. Kelly
Chief Executive Officer

Date: March 21, 2018

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Eric L. Kelly and Kurt L. Kalbfleisch, jointly and severally, as his attorney-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this annual report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ ERIC L. KELLY **Eric L. Kelly**	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	March 21, 2018
/s/ KURT L. KALBFLEISCH **Kurt L. Kalbfleisch**	Chief Financial Officer (Principal Financial and Accounting Officer)	March 21, 2018
/s/ CHEEMIN BO-LINN **Cheemin Bo-Linn**	Director	March 21, 2018
/s/ VIVEKANAND MAHADEVAN **Vivekanand Mahadevan**	Director	March 21, 2018
/s/ DUNCAN MCEWAN **Duncan McEwan**	Director	March 21, 2018
/s/ PETER TASSIOPOULOS **Peter Tassiopoulos**	Director	March 21, 2018

Report of Independent Registered Public Accounting Firm

The Shareholders and Board of Directors of
Sphere 3D Corp.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Sphere 3D Corp. (the "Company") as of December 31, 2017 and 2016, the related consolidated statements of operations, comprehensive loss, cash flows, and shareholders' equity for the years then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Company as of December 31, 2017 and 2016, and the consolidated results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern Uncertainty

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has suffered recurring losses from operations, has a net working capital deficiency, and may not be able to amend, refinance, or pay off its debt and credit facilities, which raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Moss Adams LLP

San Diego, California
March 21, 2018

We have served as the Company's auditor since 2015.

Sphere 3D Corp.

Consolidated Balance Sheets
(in thousands of U.S. dollars)

	December 31, 2017	December 31, 2016
Assets		
Current assets:		
Cash and cash equivalents	$ 4,598	$ 5,056
Accounts receivable, net of allowance for doubtful accounts of $1,675 and $1,648, respectively	11,482	11,591
Inventories	8,366	10,002
Investment	—	1,500
Other current assets	1,829	2,121
Total current assets	26,275	30,270
Property and equipment, net	2,742	3,058
Intangible assets, net	41,473	47,728
Goodwill	11,590	11,068
Other assets	1,200	432
Total assets	$ 83,280	$ 92,556
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	$ 9,362	$ 10,561
Accrued liabilities	4,157	3,619
Accrued payroll and employee compensation	3,240	2,227
Deferred revenue	5,060	5,338
Debt, related party	26,613	2,294
Debt	18,195	17,300
Other current liabilities	1,283	1,515
Total current liabilities	67,910	42,854
Deferred revenue, long-term	1,276	1,051
Long-term debt, related party	—	24,401
Deferred income taxes	1,342	3,100
Other non-current liabilities	2,289	704
Total liabilities	72,817	72,110
Commitments and contingencies (Note 14)		
Shareholders' equity:		
Common shares, no par value; 7,116 and 2,663 shares issued and outstanding as of December 31, 2017 and 2016, respectively	173,871	157,254
Accumulated other comprehensive loss	(1,981)	(1,565)
Accumulated deficit	(161,427)	(135,243)
Total shareholders' equity	10,463	20,446
Total liabilities and shareholders' equity	$ 83,280	$ 92,556

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Operations
(in thousands of U.S. dollars, except per share amounts)

	Year Ended December 31,	
	2017	2016
Net revenue:		
Product revenue	$ 72,819	$ 68,065
Service revenue	8,704	8,328
	81,523	76,393
Cost of product revenue	53,142	50,434
Cost of service revenue	3,697	3,620
Gross profit	24,684	22,339
Operating expenses:		
Sales and marketing	18,682	22,243
Research and development	7,281	8,794
General and administrative	20,112	20,728
Impairment of goodwill and acquired intangible assets	2,524	34,398
	48,599	86,163
Loss from operations	(23,915)	(63,824)
Other income (expense):		
Interest expense	(3,391)	(1,981)
Interest expense, related party	(2,520)	(3,106)
Other income, net	2,010	1,276
Loss before income taxes	(27,816)	(67,635)
(Benefit from) provision for income taxes	(1,632)	825
Net loss	$ (26,184)	$ (68,460)
Net loss per share:		
Basic and diluted	$ (5.26)	$ (34.42)
Shares used in computing net loss per share:		
Basic and diluted	4,978	1,989

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Comprehensive Loss
(in thousands of U.S. dollars)

	Year Ended December 31,	
	2017	**2016**
Net loss	$ (26,184)	$ (68,460)
Other comprehensive loss:		
Foreign currency translation adjustment	(416)	(430)
Total other comprehensive loss	(416)	(430)
Comprehensive loss	$ (26,600)	$ (68,890)

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Cash Flows
(in thousands of U.S. dollars)

	Year Ended December 31,	
	2017	**2016**
Operating activities:		
Net loss	$ (26,184)	$ (68,460)
Adjustments to reconcile net loss to cash used in operating activities:		
Impairment of goodwill and acquired intangible assets	2,524	34,398
Depreciation and amortization	6,087	6,187
Share-based compensation	7,795	9,131
Provision for losses on accounts receivable	12	715
Deferred tax (benefit) provision	(2,114)	349
Amortization of debt issuance costs	2,241	1,453
Loss on revaluation of investment	1,145	—
Fair value adjustment of warrants	(2,249)	(1,248)
Payment in-kind interest expense, related party	15	—
Loss on extinguishment of debt	—	502
Changes in operating assets and liabilities (net of effects of acquisition):		
Accounts receivable	1,377	(1,185)
Inventories	2,048	1,282
Accounts payable and accrued liabilities	1,398	1,066
Accrued payroll and employee compensation	785	(377)
Deferred revenue	(808)	(1,344)
Other assets and liabilities, net	(3,037)	58
Net cash used in operating activities	(8,965)	(17,473)
Investing activities:		
Acquisition, net of cash acquired	(1,051)	—
Purchase of fixed assets	(123)	(237)
Net cash used in investing activities	(1,174)	(237)
Financing activities:		
Proceeds from issuance of common shares and warrants	10,862	5,831
Payment for issuance costs	(1,020)	—
Proceeds from debt, related party	2,000	2,500
Payments on debt, related party	(2,308)	(5,000)
Proceeds from debt	—	18,195
Payments on debt	—	(7,391)
Payment for restricted stock units tax liability on net settlement	—	(12)
Net cash provided by financing activities	9,534	14,123
Effect of exchange rate changes on cash	147	(18)
Net decrease in cash and cash equivalents	(458)	(3,605)
Cash and cash equivalents, beginning of period	5,056	8,661
Cash and cash equivalents, end of period	$ 4,598	$ 5,056

Sphere 3D Corp.

Consolidated Statements of Cash Flows (continued)
(in thousands of U.S. dollars)

	Year Ended December 31,	
	2017	**2016**
Supplemental disclosures of cash flow information:		
Cash paid for income taxes	$ 215	$ 228
Cash paid for interest	$ 1,681	$ 946
Supplemental disclosures of non-cash investing and financing activities:		
Issuance of common shares for related party liabilities	$ 1,960	$ 1,859
Issuance of common shares for acquisition	$ 332	$ —
Issuance of common shares for settlement of liabilities	$ 184	$ 531
Issuance of warrants in relation to settlement of liabilities	$ 181	$ 1,995
Costs accrued for issuance of common shares	$ 94	$ —
Issuance of common shares for cost-method investment	$ —	$ 1,500
Issuance of warrants in relation to related party credit facility	$ —	$ 485

See accompanying notes to consolidated financial statements.

Sphere 3D Corp.

Consolidated Statements of Shareholders' Equity
(in thousands of U.S. dollars)

	Common Shares		Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' Equity
	Shares	Amount			
Balance at January 1, 2016	1,808	$ 136,058	$ (1,135)	$ (66,783)	$ 68,140
Issuance of common shares for cash and warrants, net	419	5,707	—	—	5,707
Issuance of common shares for investment purchase	158	1,500	—	—	1,500
Issuance of common shares for settlement of related party interest expense	169	1,859	—	—	1,859
Issuance of warrants	—	1,994	—	—	1,994
Issuance of warrants in relation to related party debt	—	485	—	—	485
Issuance of common shares pursuant to the vesting of restricted stock units	81	(11)	—	—	(11)
Issuance of restricted stock awards	28	531	—	—	531
Share-based compensation	—	9,131	—	—	9,131
Other comprehensive loss	—	—	(430)	—	(430)
Net loss	—	—	—	(68,460)	(68,460)
Balance at December 31, 2016	2,663	157,254	(1,565)	(135,243)	20,446
Issuance of common shares and warrants for cash, net	1,867	9,993	—	—	9,993
Allocation of warrants to liability	—	(3,647)	—	—	(3,647)
Issuance of common shares for warrant exchange	1,618	—	—	—	—
Issuance of common shares for acquisition	88	332	—	—	332
Issuance of common shares for settlement of related party interest expense	586	1,960	—	—	1,960
Issuance of common shares pursuant to the vesting of restricted stock units	239	—	—	—	—
Issuance of restricted stock awards	55	184	—	—	184
Share-based compensation		7,795	—	—	7,795
Other comprehensive loss	—	—	(416)	—	(416)
Net loss	—	—	—	(26,184)	(26,184)
Balance at December 31, 2017	7,116	$ 173,871	$ (1,981)	$ (161,427)	$ 10,463

See accompanying notes to consolidated financial statements.

1. Organization and Business

Sphere 3D Corp. (the "Company") was incorporated under the *Business Corporations Act (Ontario)* on May 2, 2007 as T.B. Mining Ventures Inc. On March 24, 2015, the Company completed a short-form amalgamation with a wholly-owned subsidiary. In connection with the short-form amalgamation, the Company changed its name to "Sphere 3D Corp."

The Company delivers data management, and desktop and application virtualization solutions through hybrid cloud, cloud and on premise implementations by its global reseller network. The Company achieves this through a combination of containerized applications, virtual desktops, virtual storage and physical hyper-converged platforms. The Company's products allow organizations to deploy a combination of public, private or hybrid cloud strategies while backing them up with the latest storage solutions. The Company has a portfolio of brands including RDX®, Glassware 2.0™, SnapCLOUD®, SnapServer®, SnapSync™, NEO®, and V3®.

Related Party Share Purchase Agreement

On February 20, 2018, the Company, Overland Storage, Inc., a California corporation and a wholly owned subsidiary of the Company ("Overland"), and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, the Company's Chief Executive Officer and Chairman of the Board of Directors (the "Purchaser") entered into a share purchase agreement (the "Purchase Agreement"), pursuant to which, among other things, and subject to certain closing conditions, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million (the "Purchase Price"), subject to a working capital adjustment (the "Share Purchase"). The net proceeds from the Share Purchase will be used to repay: (i) the Company's outstanding obligations under its Credit Agreement with Opus Bank; (ii) its outstanding obligations under the related party convertible note with FBC Holdings S.a.r.l. ("FBC Holdings"); and (iii) its related party subordinated promissory note with MF Ventures, LLC. The Special Committee of the Board of Directors of the Company and the Board of Directors of the Company (with Eric Kelly recusing himself) unanimously approved the entry into the Purchase Agreement by the Company.

Under the terms of the Purchase Agreement, the Share Purchase is contingent upon, and Purchaser must use its best efforts to arrange for, debt and/or equity financing in an amount at least equal to the Purchase Price in order to consummate the Share Purchase (the "Financing"). In addition, the Company must use commercially reasonable efforts to provide all cooperation reasonably requested by Purchaser regarding the Financing. Until the Financing is committed in accordance with a Contingency Termination Event (as defined below), the Company is free to solicit and negotiate other offers to purchase the Company, Overland or any or all of their assets and has the right to terminate the Purchase Agreement for any or no reason without penalty (subject to the expense reimbursement provisions described below).

The closing of the Share Purchase and of the other transactions contemplated by the Purchase Agreement are subject to (i) the adoption of the Purchase Agreement by the affirmative vote of the holders of (a) at least 66 2/3% of the outstanding common shares of the Company cast in person or by proxy at the special meeting of shareholders and (b) a majority of the votes cast by certain "minority shareholders" in person or by proxy at the special meeting of shareholders (the "Shareholder Approval") and (ii) the transfer by the Company of (a) the businesses of (x) Unified ConneXions, Inc. and (y) HVE ConneXions, LLC (including the provision of information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions), and (b) the SNAP network attached storage business to a subsidiary of the Company other than Overland or a subsidiary of Overland. The closing of the Share Purchase and of the other transactions contemplated by the Purchase Agreement are also subject to various other conditions, including the consummation of the Financing, the absence of any order, statute, rule, regulation, executive order, decree or injunction issued by any governmental entity prohibiting the Share Purchase, the absence of a pending claim, suit, action or proceeding material claims seeking to prohibit the Share Purchase, the accuracy of the representations and warranties contained in the Purchase Agreement, compliance with the covenants and agreements contained in the Purchase Agreement in all material respects, and the absence of a material adverse effect on either the Company or Overland.

The Company has made customary representations, warranties and covenants in the Purchase Agreement, including, among others, covenants (i) to conduct its business in the ordinary course during the period between the execution of the Purchaser Agreement and the closing of the Share Purchase, (ii) not to engage in specified types of transactions during this period unless agreed to in writing by Purchaser, (iii) to convene and hold a meeting of its shareholders for the purpose of obtaining the Shareholder Approval and (iv) subject to certain exceptions and only following the occurrence of the Contingency Termination Event (as defined below), not to solicit and negotiate other offers to purchase the Company, Overland or any or all of their assets or to withdraw, modify or qualify in a manner adverse to Purchaser the recommendation of the Board that the Company's shareholders vote in favor of approving the Share Purchase. The Company has also agreed to indemnification provisions in favor of Purchaser that are customary for transactions of this type.

Prior to the (i) execution and delivery of financing commitments in forms reasonably acceptable to the Company, which provide, among other things, for commitments from financing sources sufficient to pay the Purchase Price in the Share Purchase, (ii) execution and delivery by Purchaser of an irrevocable waiver in a form reasonably acceptable to the Company waiving Purchaser's condition to the obligation to close the Share Purchase that the Financing has been received and (iii) an executed certificate delivered by Purchaser to the Company regarding the accuracy of certain representations regarding the Financing (the "Contingency Termination Event"), the Company has the right to terminate the Purchase Agreement for any reason or for no reason. The Purchase Agreement also provides that, upon such termination of the Purchase Agreement by the Company, the Company has agreed to reimburse Purchaser up to approximately $350,000 for the reasonable and documented out-of-pocket expenses incurred by the Purchaser and the sources for the Financing in connection with the negotiation, execution and performance of the Purchase Agreement and the transactions contemplated thereby, as well as the fees and expenses of the Purchaser's outside counsel.

In addition, the Purchase Agreement contains certain other termination rights, including, following the occurrence of the Contingency Termination Event, the right of the Company to terminate the Purchase Agreement under specified circumstances to accept an unsolicited superior proposal from a third party. The Purchase Agreement provides that, following the occurrence of the Contingency Termination Event and upon termination of the Purchase Agreement by the Company under specified circumstances (including termination by the Company to accept a superior proposal) or by Purchaser under specified circumstances, a termination fee equal to the lesser of (i) $1.0 million and (ii) the amount of Purchaser's reasonable fees and expenses in connection with the negotiation, execution and performance of the Purchase Agreement (including the amount that the Purchaser must pay or reimburse to the sources for the Financing) will be payable by the Company to the Purchaser. Such termination fee is also payable following the occurrence of the Contingency Termination Event under certain other specified circumstances set forth in the Purchase Agreement. The Purchase Agreement also provides that each party to the Purchase Agreement may compel the other party or parties thereto to specifically perform its or their obligations under the Purchase Agreement. However, if the Purchase Agreement is terminated such that the Company termination fee becomes payable, the Purchaser will be precluded from any other remedy against the Company or Overland, including expense reimbursement and specific performance. Further, if the Purchase Agreement is terminated such that the expense reimbursement becomes payable, the Purchaser will be precluded from any other remedy against the Company or Overland, including the Company termination fee and specific performance. Subject to certain exceptions and limitations, either party may terminate the Purchase Agreement if the Share Purchase is not consummated by August 19, 2018.

Management has projected that cash on hand will not be sufficient to allow the Company to continue operations beyond March 31, 2018 if the Company is unable to amend, refinance, or pay off its debt and credit facilities. In February 2018, the Company entered into a Purchase Agreement. If the transactions contemplated by the Purchase Agreement are consummated, the Company expects that the proceeds to be received by the Company would be sufficient to pay off its outstanding debt and credit facilities. The Company anticipates to hold a special shareholder meeting in April 2018 to seek shareholder approval for the Share Purchase and, subject to the receipt of requisite shareholder approval, anticipates the transaction will close shortly thereafter. There can be no guarantee that we will be able to raise additional funds or amend or refinance our debt and credit facilities on favorable terms or at all, nor can there be any guarantee that the Company’s shareholders will approve the Share Purchase. Significant changes from the Company’s current forecasts, including but not limited to: (i) failure to comply with the financial covenants in its credit facilities; (ii) shortfalls from projected sales levels; (iii) unexpected increases in product costs; (iv) increases in operating costs; (v) changes in the historical timing of collecting accounts receivable; and (vi) inability to maintain compliance with the requirements of the NASDAQ Capital Market and/or inability to maintain listing with the NASDAQ Capital Market could have a material adverse impact on the Company’s ability to access the level of funding necessary to continue its operations at current levels. If any of these events occurs or the Company is unable to generate sufficient cash from operations or financing sources, the Company may be forced to liquidate assets where possible and/or curtail, suspend or cease planned programs or operations generally or possibly seek bankruptcy protection, which would have a material adverse effect on the Company’s business, results of operations, financial position and liquidity.

The Company incurred losses from operations and negative cash flows from operating activities for the 12 months ended December 31, 2017, and such losses might continue for a period of time. Based upon the Company's current expectations and projections for the next year, the Company believes that it may not have sufficient liquidity necessary to sustain operations beyond March 31, 2018 due to the maturity dates of the existing debt facilities. These factors, among others, raise doubt that the Company will be able to continue as a going concern. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

Reverse Stock Split

On July 5, 2017, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company’s issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts in the accompanying consolidated financial statements and the notes thereto have been restated for all periods to reflect the share consolidation.

2. Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements of the Company have been prepared by management in accordance with accounting principles generally accepted in the United States of America (“GAAP”), applied on a basis consistent for all periods. These consolidated financial statements include the accounts of the Company and its subsidiaries, all of which are wholly owned. All intercompany balances and transactions have been appropriately eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and reported amounts of revenues and expenses during the reporting period. Significant areas requiring the use of management estimates relate to the determination of provisions for impairment assessments of goodwill, other indefinite-lived intangible assets and long-lived assets; deferred revenue; allowance for doubtful receivables; inventory valuation; warranty provisions; deferred income taxes; and litigation claims. Actual results could differ from these estimates.

Foreign Currency Translation

The financial statements of foreign subsidiaries, for which the functional currency is the local currency, are translated into U.S. dollars using the exchange rate at the consolidated balance sheet date for assets and liabilities and a weighted-average exchange rate during the year for revenue, expenses, gains and losses. Translation adjustments are recorded as other comprehensive income (loss) within shareholders' equity. Gains or losses from foreign currency transactions are recognized in the consolidated statements of operations. Such transactions resulted in a gain of $0.9 million in 2017 and a minimal loss in 2016.

Cash Equivalents

Highly liquid investments with insignificant interest rate risk and original maturities of three months or less, when purchased, are classified as cash equivalents. Cash equivalents are composed of money market funds. The carrying amounts approximate fair value due to the short maturities of these instruments.

Accounts Receivable

Accounts receivable is recorded at the invoiced amount and is non-interest bearing. We estimate our allowance for doubtful accounts based on an assessment of the collectability of specific accounts and the overall condition of the accounts receivable portfolio. When evaluating the adequacy of the allowance for doubtful accounts, we analyze specific trade and other receivables, historical bad debts, customer credits, customer concentrations, customer credit-worthiness, current economic trends and changes in customers' payment terms and/or patterns. We review the allowance for doubtful accounts on a quarterly basis and record adjustments as considered necessary. Customer accounts are written-off against the allowance for doubtful accounts when an account is considered uncollectable. At December 31, 2017 and 2016, allowance for doubtful accounts of $1.7 million and $1.6 million, respectively, was recorded.

Inventories

Inventories are stated at the lower of cost and net realizable value using the first-in-first-out method. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. We assess the value of inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost, and net realizable value. If necessary, we write down its inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the net realizable value.

Property and Equipment

Property and equipment are recorded at cost. Depreciation expense is computed using the straight-line method. Leasehold improvements are depreciated over the shorter of the remaining estimated useful life of the asset or the term of the lease.

Expenditures for normal maintenance and repair are charged to expense as incurred, and improvements are capitalized. Upon the sale or retirement of property or equipment, the asset cost and related accumulated depreciation are removed from the respective accounts and any gain or loss is included in the results of operations.

Estimated useful lives are typically as follows:

Building	40 years
Machinery and equipment	3-5 years
Furniture and fixtures	5 years
Computer equipment and software	1-5 years

Goodwill and Intangible Assets

Goodwill represents the excess of consideration paid over the value assigned to the net tangible and identifiable intangible assets acquired. For intangible assets purchased in a business combination, the estimated fair values of the assets received are used to establish their recorded values. For intangible assets acquired in a non-monetary exchange, the estimated fair values of the assets transferred (or the estimated fair values of the assets received, if more clearly evident) are used to establish their recorded values. Valuation techniques consistent with the market approach, income approach and/or cost approach are used to measure fair value.

Purchased intangible assets are amortized on a straight-line basis over their economic lives of six to 25 years for channel partner relationships, three to nine years for developed technology, three to eight years for capitalized development costs, and two to 25 years for customer relationships as this method most closely reflects the pattern in which the economic benefits of the assets will be consumed.

Impairment of Goodwill, Intangible Assets and Long-Lived Assets

Goodwill and intangible assets are tested for impairment on an annual basis at December 31, or more frequently if there are indicators of impairment. Triggering events for impairment reviews may be indicators such as adverse industry or economic trends, restructuring actions, lower projections of profitability, or a sustained decline in our market capitalization. Intangible assets are quantitatively assessed for impairment, if necessary, by comparing their estimated fair values to their carrying values. If the carrying value exceeds the fair value, the difference is recorded as an impairment.

Long-lived assets are reviewed for recoverability whenever events or changes in circumstances indicate the carrying value may not be recoverable. Our consideration includes, but is not limited to: (i) significant under-performance relative to historical or projected future operating results; (ii) significant changes in the manner of use of the assets or the strategy for the Company’s overall business; (iii) significant decrease in the market value of the assets; and (iv) significant negative industry or economic trends. When the carrying value is not considered recoverable, an impairment loss for the amount by which the carrying value of a long-lived asset exceeds its fair value is recognized, with an offsetting reduction in the carrying value of the related asset.

Revenue Recognition

Revenue from sales of products is recognized when persuasive evidence of an arrangement exists, the price is fixed or determinable, collectability is reasonably assured and delivery has occurred. Under this policy, revenue on direct product sales, excluding sales to distributors, is recognized upon shipment of products to customers. These customers are not entitled to any specific right of return or price protection, except for any defective product that may be returned under our standard product warranty. Revenue from services, such as extended product warranties, are deferred and recognized over the period of the service agreement.

Depending on delivery terms, title and risk of loss transfer to the customer when the product leaves the Company’s dock, or when the product arrives at the customer’s location. Product sales to distribution customers are subject to certain rights of return, stock rotation privileges and price protection. Because we are unable to estimate its exposure for returned product or price adjustments, revenue from shipments to these customers is not recognized until the related products are in turn shipped to the ultimate customer by the distributor. For products for which software is more than an incidental component, we recognize revenue in accordance with current authoritative guidance for software revenue recognition.

In limited circumstances where a customer is unable to accept shipment and requests products be delivered to, and stored on, the Company’s premises, revenue is recognized when: (i) the customer has accepted risk of loss and acknowledged passage of title to the goods (ii) the customer has made a fixed commitment to purchase the products, (iii) the customer has requested delayed delivery and storage of the products, (iv) there is an agreed schedule for shipment of products to the customer within a reasonable period of time, (v) the Company has no specific performance obligation such that the earnings process for the products, as a unit of accounting, is not complete, (vi) the goods are segregated from the inventory and not available to fill other orders, (vii) the product is complete, ready for shipment and accepted by the customer, and (viii) all other criteria above for revenue recognition have been met.

The Company enters into revenue arrangements that may consist of multiple deliverables of its product and service offerings, such as for sales of hardware devices and extended warranty services. The Company allocates revenue to deliverables in multiple element arrangements based on relative selling prices. The Company determines its vendor-specific objective evidence ("VSOE") based on its normal pricing and discounting practices for the specific product or service when sold separately. When the Company is not able to establish VSOE for all deliverables in an arrangement with multiple elements, the Company determines the selling price of each element based on third party evidence of selling price, or based on the Company's actual historical selling prices of similar items, whichever management believes provides the most reliable estimate of expected selling prices.

Warranty and Extended Warranty

We record a provision for standard warranties provided with all products. If future actual costs to repair were to differ significantly from estimates, the impact of these unforeseen costs or cost reductions would be recorded in subsequent periods.

Separately priced extended on-site warranties and service contracts are offered for sale to customers on all product lines. We contract with third party service providers to provide service relating to on-site warranties and service contracts. Extended warranty and service contract revenue and amounts paid in advance to outside service organizations are deferred and recognized as service revenue and cost of service, respectively, over the period of the service agreement.

Shipping and Handling

Amounts billed to customers for shipping and handling are included in product revenue, and costs incurred related to shipping and handling are included in cost of product revenue.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses were $1.5 million and $2.5 million for the years ended December 31, 2017 and 2016, respectively.

Research and Development Costs

Research and development expenses include payroll, employee benefits, share-based compensation expense, and other headcount-related expenses associated with product development. Research and development expenses also include third party development and programming costs, localization costs incurred to translate software for international markets, and the amortization of purchased software code and services content. Such costs related to software development are included in research and development expense until the point that technological feasibility is reached, which for our software products, is generally shortly before the products are released to manufacturing. Once technological feasibility is reached, such costs are capitalized and amortized to cost of revenue over the estimated lives of the products. During 2017 and 2016, no development costs were capitalized.

Segment Information

We report segment data based on the management approach. The management approach designates the internal reporting that is used by management for making operating and investment decisions and evaluating performance as the source of our reportable segments. We use one measurement of profitability and do not disaggregate our business for internal reporting. We operate in one segment providing data management, and desktop and application virtualization solutions for small and medium businesses and distributed enterprises. We disclose information about products and services, geographic areas, and major customers.

Income Taxes

We provide for income taxes utilizing the asset and liability approach of accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. The provision for income taxes generally represents income taxes paid or payable for the current year plus the change in deferred taxes during the year. Deferred taxes result from differences between the financial and tax basis of our assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when a judgment is made that it is considered more likely than not that a tax benefit will not be realized. A decision to record a valuation allowance results in an increase in income tax expense or a decrease in income tax benefit. If the valuation allowance is released in a future period, income tax expense will be reduced accordingly.

The calculation of tax liabilities involves evaluating uncertainties in the application of complex global tax regulations. The impact of an uncertain income tax position is recognized at the largest amount that is "more likely than not" to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. If the estimate of tax liabilities proves to be less than the ultimate assessment, a further charge to expense would result.

Comprehensive Loss

Comprehensive loss and its components encompasses all changes in equity other than those arising from transactions with shareholders, including net loss and foreign currency translation adjustments, and is disclosed in a separate consolidated statement of comprehensive loss.

Concentration of Credit Risks

Financial instruments that potentially subject us to concentrations of credit risk consist primarily of trade accounts receivable, which are generally not collateralized. To reduce credit risk, we perform ongoing credit evaluations of its customers and maintain allowances for potential credit losses for estimated bad debt losses.

At December 31, 2017 and 2016, there was one customer that made up 12.3% and 13.0%, respectively, of accounts receivable. There were no customers for the years ended December 31, 2017 and 2016 that made up 10% or more of net revenue.

Share-based Compensation

We account for share-based awards, and similar equity instruments, granted to employees, non-employee directors, and consultants under the fair value method. Share-based compensation award types include stock options and restricted stock. We use the Black-Scholes option pricing model to estimate the fair value of option awards on the measurement date, which generally is the date of grant. The expense is recognized over the requisite service period (usually the vesting period) for the estimated number of instruments for which service is expected to be rendered. The fair value of restricted stock units ("RSUs") is estimated based on the market value of the Company's common shares on the date of grant. The fair value of options granted to non-employees is estimated at the measurement date using the Black-Scholes option pricing model and the unvested options remeasured at each reporting date, with changes in fair value recognized in expense in the consolidated statement of operations.

Share-based compensation expense for options with graded vesting is recognized pursuant to an accelerated method. Share-based compensation expense for RSUs is recognized over the vesting period using the straight-line method. Share-based compensation expense for an award with performance conditions is recognized when the achievement of such performance conditions are determined to be probable. If the outcome of such performance condition is not determined to be probable or is not met, no compensation expense is recognized and any previously recognized compensation expense is reversed. Forfeitures are recognized in share-based compensation expense as they occur.

We have not recognized, and do not expect to recognize in the near future, any tax benefit related to share-based compensation cost as a result of the full valuation allowance of our net deferred tax assets and its net operating loss carryforward.

Recently Issued Accounting Pronouncements

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB") that are adopted by the Company as of the specified effective date. If not discussed, the Company believes that the impact of recently issued standards, which are not yet effective, will not have a material impact on the Company's consolidated financial statements upon adoption.

In July 2017, the FASB issued Accounting Standards Update ("ASU") No. 2017-11, *Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815)* ("ASU 2017-11"). The update changes the classification of certain equity-linked financial instruments (or embedded features) with down round features. The update also clarifies existing disclosure requirements for equity-classified instruments. The update is effective retrospectively for annual reporting periods beginning after December 15, 2018, including interim periods within that reporting period. Early adoption is permitted for all companies in any interim or annual period. We are currently evaluating the effect that ASU 2017-11 will have on our consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles - Goodwill and Other (Topic 350) - Simplifying the Test for Goodwill Impairment* ("ASU 2017-04"). The update simplifies the subsequent measurement of goodwill by eliminating Step 2 from the goodwill impairment test. An entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount, and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value, if applicable. The loss recognized should not exceed the total amount of goodwill allocated to the reporting unit. The same impairment test also applies to any reporting unit with a zero or negative carrying amount. An entity still has the option to perform the qualitative assessment for a reporting unit to determine if the quantitative impairment test is necessary. The update is effective for annual reporting periods, including interim periods, beginning after December 15, 2019, on a prospective basis. Early adoption is permitted for interim or annual goodwill impairment tests performed after January 1, 2017. We do not expect the adoption of ASU 2017-04 to have a material effect on our consolidated financial statements and related disclosures.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"). The update addresses eight cash flow classification issues and how they should be reported in the statement of cash flows. The update is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Early adoption is permitted for all companies in any interim or annual period. We are currently evaluating the effect that ASU 2016-15 will have on our consolidated financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* ("ASU 2016-02"). The update increases transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and requires disclosing key information about leasing arrangements. The update is effective for reporting periods beginning after December 15, 2018, with early adoption permitted. An entity will be required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. We are currently evaluating the effect that ASU 2016-02 will have on our consolidated financial statements and related disclosures.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers* ("ASU 2014-09"). In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers (Topic 606). In March, April, May and December 2016, the FASB issued additional guidance related to Topic 606. The new standard will supersede nearly all existing revenue recognition guidance. Under Topic 606, an entity is required to recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. Topic 606 defines a five-step process in order to achieve this core principle, which may require the use of judgment and estimates, and also requires expanded qualitative and quantitative disclosures relating to the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers, including significant judgments and estimates used. The new standard permits adoption either by using (i) a full retrospective approach for all periods presented in the period of adoption or (ii) a modified retrospective approach where the new standard is applied in the financial statements starting with the year of adoption. We plan to adopt the new standard effective January 1, 2018 using the modified retrospective approach. The Company expects the adoption of the new standard will result in the recognition of revenues generally upon shipment (sell-in basis) for sales of products to certain customers which are currently being recognized on a sell-through basis. The Company estimates the adoption of the new standard under the modified retrospective method to result in a cumulative adjustment reducing our accumulated deficit by approximately $0.3 million. Additionally, as we continue to assess the new standard along with industry trends and additional interpretive guidance, we may adjust our adoption accordingly.

Recently Adopted Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-09, *Compensation - Stock Compensation (Topic 718)* ("ASU 2016-09"). ASU 2016-09 simplifies the accounting for several aspects of the accounting for share-based payment transactions including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The update is effective for annual reporting periods beginning after December 15, 2016, including interim periods within that reporting period. The Company adopted ASU 2016-09 effective January 1, 2017. The impact on our consolidated financial statements and related disclosures was not material.

In July 2015, the FASB issued ASU 2015-11, *Inventory (Topic 330): Simplifying the Measurement of Inventory* ("ASU 2015-11"). The update requires that for entities that measure inventory using the first-in, first-out method, inventory should be measured at the lower of cost and net realizable value. *Topic 330, Inventory*, currently requires an entity to measure inventory at the lower of cost or market. Market could be replacement cost, net realizable value, or net realizable value less an approximately normal profit margin. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The update is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. The amendments should be applied prospectively with earlier application permitted as of the beginning of an interim or annual reporting period. The Company adopted ASU 2015-11 effective January 1, 2017. The impact on our consolidated financial statements and related disclosures was not material.

3. Business Combination

UCX and HVE Acquisition

In December 2016, the Company acquired 19.9% of the outstanding equity interests of Unified ConneXions, Inc. ("UCX") and HVE ConneXions, LLC ("HVE") for the purchase price of $1.5 million. The Company issued 157,894 shares of its common shares in satisfaction of payment. In January 2017, the Company completed its acquisition of all of the remaining outstanding equity interests of UCX and HVE, for $1.1 million in cash and issued 88,235 common shares with an approximate value of $0.3 million. In 2017, the Company recognized a $1.1 million loss, included in other expense, as a result of the remeasurement to fair value the equity interest held immediately before the business combination. The valuation was based on the Company's private placement completed as of January 26, 2017.

UCX and HVE provide information technology consulting services and hardware solutions around cloud computing, data storage and server virtualization to corporate, government, and educational institutions primarily in the southern central United States. By adding UCX's technologies, professional services and engineering talent, and HVE's products, engineering and virtualization expertise, the Company intends to expand its virtualization offerings as well as enhance its ability to accelerate the delivery of hybrid cloud solutions to customers. We incurred acquisition related expenses of $34,000 which consisted primarily of due diligence, legal and other one-time charges and are included in general and administrative expense in the consolidated statements of operations.

A summary of the estimated fair values of the assets acquired and liabilities assumed as of the closing date were as follows (in thousands):

Cash	$ 49
Accounts receivable	582
Inventory	206
Identifiable intangible assets	1,260
Other assets	45
Total identifiable assets acquired	2,142
Accounts payable and accrued liabilities	(359)
Deferred revenue	(518)
Net identifiable assets acquired	1,265
Goodwill	522
Net assets acquired	$ 1,787

Goodwill is primarily comprised of a trained an assembled workforce. The fair value estimates for the assets acquired and liabilities assumed for the acquisition were based on estimates and analysis, including work performed by third party valuation specialists. The goodwill recognized upon acquisition is not deductible for tax purposes.

The results of operations related to this acquisition have been included in our consolidated statements of operations from the acquisition date. Pro forma results of operations have not been presented because at this time it is impracticable to provide as the information is not available at the level of detail required.

The identified intangible assets as of the date of acquisition consisted of the following (in thousands):

	Estimated Fair Value	Weighted-Average Useful Life (years)
Channel partner relationships	$ 730	6.0
Customer relationships	380	3.2
Developed technology	150	3.0
Total identified intangible assets	$ 1,260	

4. Certain Balance Sheet Items

The following table summarizes inventories (in thousands):

	December 31, 2017	December 31, 2016
Raw materials	$ 1,222	$ 1,697
Work in process	2,217	2,673
Finished goods	4,927	5,632
	$ 8,366	$ 10,002

The following table summarizes property and equipment (in thousands):

	December 31, 2017	December 31, 2016
Building	$ 1,870	$ 1,646
Computer equipment	1,742	1,864
Machinery and equipment	1,302	1,062
Leasehold improvements	1,186	1,100
Furniture and fixtures	100	83
	6,200	5,755
Accumulated depreciation and amortization	(3,458)	(2,697)
	$ 2,742	$ 3,058

Depreciation and amortization expense for property and equipment was $0.7 million and $1.1 million for the years ended December 31, 2017 and 2016, respectively.

5. Intangible Assets and Goodwill

The following table summarizes intangible assets, net (in thousands):

	December 31,	
	2017	2016
Developed technology	$ 23,414	$ 23,685
Channel partner relationships[1]	12,929	11,989
Capitalized development costs[1]	3,164	2,937
Customer relationships[1]	1,647	1,171
	41,154	39,782
Accumulated amortization:		
Developed technology	(15,276)	(11,234)
Channel partner relationships[1]	(1,201)	(565)
Capitalized development costs[1]	(1,409)	(958)
Customer relationships[1]	(495)	(207)
	(18,381)	(12,964)
Total finite-lived assets, net	22,773	26,818
Indefinite-lived intangible assets - trade names	18,700	20,910
Total intangible assets, net	$ 41,473	$ 47,728

(1) Includes the impact of foreign currency exchange rate fluctuations.

Amortization expense of intangible assets was $5.4 million and $5.1 million for the years ended December 31, 2017 and 2016, respectively. Estimated amortization expense for intangible assets is approximately $3.7 million, $2.6 million, $2.5 million, $2.1 million and $1.9 million in fiscal 2018, 2019, 2020, 2021 and 2022, respectively.

Goodwill

The changes in the carrying amount of goodwill were as follows (in thousands):

Balance as of January 1, 2016	44,132
Goodwill acquired	164
Impairment loss	(33,228)
Balance as of December 31, 2016	11,068
Goodwill acquired	522
Balance as of December 31, 2017	$ 11,590

Impairments

In 2017, primarily as a result of the Company's change in revenue projection for its Snap product line, it was determined the carrying value of indefinite-lived intangible assets exceeded its estimated fair value. In measuring fair value, the Company used income and market approaches. The Company compared the indicated fair value to the carrying value of its indefinite-lived assets, and as a result of the analysis, an impairment charge of $2.2 million was recorded to indefinite-lived trade names for the year ended December 31, 2017. In addition, the Company recorded an impairment of $0.3 million related to developed technology for the year ended December 31, 2017.

In 2016, as a result of the Company's declining market capitalization it was determined the carrying value exceeded its estimated fair value. In measuring fair value, the Company used income and market approaches. The Company compared the indicated fair value to the carrying value of its indefinite-lived assets, and as a result of the analysis, an impairment charge of $1.2 million was recorded to indefinite-lived trade names for the year ended December 31, 2016. In addition, the Company compared the implied fair value of the goodwill to the carrying value of the goodwill, and as a result of the analysis, an impairment charge of $33.2 million was recorded for the year ended December 31, 2016.

6. Debt

Related Party Convertible Note

In December 2014, in connection with the acquisition of Overland, the existing debt of Overland and the remaining debt of the Company were amended and restated into a $19.5 million convertible note held by FBC Holdings. In April 2016, the Company modified its convertible note with FBC Holdings, pursuant to which the holder made an additional advance and principal amount under the convertible note amount was increased to $24.5 million. The convertible note is scheduled to mature March 31, 2018 and bears interest at an 8.0% simple annual interest rate, payable semi-annually. The obligations under the convertible note are secured by substantially all assets of the Company. At December 31, 2017, the Company had $24.4 million, net of unamortized debt costs of $0.1 million, outstanding on the convertible note.

The Company has the option to pay accrued and outstanding interest either entirely in cash or common shares. If the Company choses to pay the interest in common shares, the calculation is based upon the number of common shares that may be issued as payment of interest on the convertible note and will be determined by dividing the amount of interest due by current market price as defined in the convertible note agreement. For the years ended December 31, 2017 and 2016, the Company issued 586,298 and 168,594 common shares, respectively, for the settlement of accrued interest expense.

In November 2015, the convertible note's conversion price was adjusted to $75.00 per share. In February 2016, in connection with the November 2015 modification and certain specified terms, the Company issued to the holder of the convertible note a warrant to purchase 20,000 common shares of the Company at a price of $40.50.

At the option of the Company, the convertible note is convertible into common shares at the conversion price at any time that the weighted average trading price for the common shares exceeds 150% of the conversion price (i.e. exceeds $112.50 per share), for ten consecutive trading days on its principal stock exchange that the common shares trade.

The convertible note contains customary covenants, including covenants that limit or restrict the Company's ability to incur liens, incur indebtedness, or make certain restricted payments. Upon the occurrence of an event of default under the convertible note, the Holder may declare all amounts outstanding to be immediately due and payable. The convertible note specifies a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults, cross-defaults to other materials indebtedness, bankruptcy and insolvency defaults, and material judgment defaults. As of December 31, 2017, the Company was in compliance with all covenants of the convertible note.

For the years ended December 31, 2017 and 2016, interest expense, including amortization of debt costs, on the convertible note was $2.2 million and $2.1 million, respectively.

Related Party Debt

In December 2017, the Company entered into a $2.0 million subordinated promissory note with MF Ventures, LLC, a related party. The promissory note is subordinate to the Company's Opus Bank Credit Agreement and FBC Holdings indebtedness and has a maturity date of the earliest of: (i) December 11, 2020; (ii) immediately after repayment in full of the Opus Bank Credit Agreement and the FBC Holdings indebtedness; or (iii) immediately after the Company's refinancing of both the Opus Bank Credit Agreement and the FBC Holdings indebtedness. The promissory note may be prepaid at any time by the Company; including any accrued and unpaid interest and a $0.3 million prepayment penalty. The promissory note bears interest at a 12.5% simple annual interest rate, payable quarterly in arrears. Interest shall be paid in kind by increasing the principal amount of the note on each quarterly interest payment date.

In September 2016, the Company entered into a $2.5 million agreement with FBC Holdings. The term loan has a maturity date of January 31, 2018 and bears interest at a 20.0% simple annual interest rate, payable monthly in arrears. Monthly payments of principal on the term loan began on January 31, 2017, in 13 equal installments. The Company has the option to pre-pay the outstanding balance of the term loan, plus any accrued interest, at any time. The obligations of the Company and certain of its subsidiaries (collectively, the "Loan Parties") under the term loan agreement and related documents will be secured by substantially all assets of the Loan Parties. At December 31, 2017, the outstanding balance of the term loan was $0.2 million. For the years ended December 31, 2017 and 2016, interest expense, including amortization of debt costs, on the term loan was $0.3 million and $0.1 million, respectively. In January 2018, the FBC Holdings term loan was paid in full per the term loan agreement.

Credit Agreement

In April 2016, the Company entered into a Credit Agreement with Opus Bank for a term loan in the amount of $10.0 million and a credit facility in the amount of up to $10.0 million. A portion of the proceeds were used to pay off the Company's then outstanding credit facilities with FBC Holdings and Silicon Valley Bank. The remainder of the proceeds were used for working capital and general business requirements. On December 30, 2016, the credit facility was reduced to $8.2 million. The obligations under the term loan and credit facility are secured by substantially all assets of the Company other than the stock of its subsidiaries organized outside of the U.S. and Canada that are pledged to secure the Company's obligations under the Company's convertible note. At December 31, 2017 and 2016, the interest rate on the term loan and credit facility was 8.25% and 6.5%, respectively.

In September 2017, the Company and Opus Bank entered into an Amendment Number Seven to Credit Agreement, Waiver and Reaffirmation ("Amendment Number Seven"). Under the terms of Amendment Number Seven; (a) the maturity date for the revolving and term loan credit facilities were amended to the earliest of (i) the maturity of the convertible note held by FBC Holdings, (ii) March 31, 2018; or (iii) such earlier date upon which the obligations may be accelerated in accordance with terms of the Credit Agreement, and (b) in the event of a failure by the Company to comply with certain covenants and milestones set forth in Amendment Number Seven, all amounts under the Opus Credit Agreement may be accelerated and become immediately payable.

In March 2017, the Company and Opus Bank entered into an Amendment Number Two to Credit Agreement, Amendment Number One to Amendment Number 1, Waiver and Reaffirmation (the "Second Amendment"). As a condition of the Second Amendment, the Company issued to Opus Bank (i) a warrant, exercisable for 15,957 shares at an exercise price of $0.25 per common share as the debt was not repaid by April 17, 2017 and (ii) a warrant, exercisable for 35,242 shares at an exercise price of $0.25 per common share as the debt was not repaid by May 31, 2017.

In December 2016, as a condition of the extension of credit to the Company under the Credit Agreement, the Company issued to Opus Bank a warrant exercisable for 34,483 shares at an exercise price of $0.25 per common share. The December 2016 warrant replaced the warrant that was previously issued in April 2016.

The term loan and credit facility contain customary covenants, including covenants that limit or restrict the Company's ability to incur liens, incur indebtedness, or make certain restricted payments. Upon the occurrence of an event of default under the term loan, the holder may declare all amounts outstanding to be immediately due and payable. The term loan and credit facility specify a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults, cross-defaults to other materials indebtedness, bankruptcy and insolvency defaults, and material judgment defaults. As of December 31, 2017, the Company was in compliance with all covenants of the term loan and credit facility.

At December 31, 2017, the outstanding balances of the term loan and credit facility were $10.0 million and $8.2 million, respectively. For the years ended December 31, 2017 and 2016, interest expense, including amortization of debt costs, on the Opus facilities was $3.4 million and $1.8 million.

Terminated Related Party Credit Facility

In December 2014, the Company entered into a revolving credit agreement with FBC Holdings for a revolving credit facility of $5.0 million. In July 2015, the credit facility was amended to extend the scheduled maturity date to May 2016 with an automatic extension to November 2016, and the aggregate borrowing amount was increased to $10.0 million. In April 2016, the credit facility was terminated upon repayment of the outstanding balance.

For the years ended December 31, 2017 and 2016, interest expense for the credit facility was none and $0.9 million, respectively, which included $0.7 million of amortization of issuance costs in the year ended 2016.

7. Fair Value Measurements

The authoritative guidance for fair value measurements establishes a three tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

Assets and Liabilities that are Measured at Fair Value on a Recurring Basis

Our financial instruments include cash equivalents, accounts receivable, prepaid expenses, accounts payable, accrued expenses, credit facility, debt and related party debt. Fair value estimates of these instruments are made at a specific point in time, based on relevant market information. These estimates may be subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. The carrying amount of cash equivalents, accounts receivable, prepaid expenses, accounts payable and accrued expenses are generally considered to be representative of their respective fair values because of the short-term nature of those instruments. The carrying amount of the credit facility borrowings approximate their fair value as the interest rate of the credit facility is substantially comparable to rates offered for similar debt instruments. The carrying value of debt and related party debt approximates its fair value as the borrowing rates are substantially comparable to rates available for loans with similar terms.

The following table provides information by level for liabilities that are measured at fair value using significant unobservable inputs (Level 3) (in thousands):

Warrant liability as of January 1, 2016	$	1,447
Change in fair value of warrants		(1,248)
Reclassification to equity		1
Warrant liability as of December 31, 2016		200
Additions to warrant liability		4,677
Change in fair value of warrants		(2,249)
Reclassification to equity		(959)
Warrant liability as of December 31, 2017	$	1,669

The Company determined the estimated fair value of the warrant liability using a Black-Scholes model using similar assumptions as disclosed in *Note 9 - Equity Incentive Plan*.

Assets and Liabilities that are Measured at Fair Value on a Nonrecurring Basis

The Company's non-financial assets such as goodwill, intangible assets and property and equipment are recorded at fair value when an impairment is recognized or at the time acquired in a business combination. As discussed in *Note 5 - Intangible Assets and Goodwill*, at December 31, 2017, the Company recorded impairment charges associated with acquired intangible assets, and reduced the carrying amount of such assets subject to the impairment to their estimated fair value. At December 31, 2016, the Company recorded impairment charges associated with goodwill and acquired intangible assets, and reduced the carrying amount of such assets subject to the impairment to their estimated fair value.

8. Share Capital

Reverse Stock Split

On July 5, 2017, the Board of Directors of the Company authorized a share consolidation (also known as a reverse stock split) of the Company's issued and outstanding common shares at a ratio of 1-for-25, which became effective on July 11, 2017. All share and per share amounts have been restated for all periods to reflect the share consolidation.

The Company has unlimited authorized shares of common shares at no par value. At December 31, 2017, the Company had the following outstanding warrants to purchase common shares:

Date issued	Contractual life (years)	Exercise price	Number outstanding		Expiration
February 2015	3	$112.50	4,000		February 20, 2018
March 2015	3	$180.25	4,000		March 6, 2018
March 2015	3	$125.50	4,000		March 20, 2018
May 2015	5	$100.00	33,600		May 31, 2020
October 2015	5	$58.25	16,077		October 14, 2020
December 2015	3	$38.50	20,000		December 21, 2018
December 2015	5	$62.50	41,100		December 15, 2020
December 2015	5	$27.00	60,000	(1)	December 4, 2020
January 2016	3	$51.50	3,539		November 30, 2018
February 2016	3	$40.50	20,000		February 26, 2019
March 2016	5	$62.50	1,200		March 4, 2021
November 2016	3	$50.00	1,000		November 8, 2019
December 2016	6	$0.25	34,483		December 30, 2022
March 2017	6	$0.25	15,957		April 18, 2023
March 2017	6	$0.25	35,242		June 1, 2023
March 2017	5	$5.00	1,300,910	(2)	March 24, 2022
August 2017	5	$5.25	300,000		August 11, 2022
August 2017	5	$5.25	95,000		August 16, 2022
August 2017	5	$5.25	205,000		August 22, 2022
			2,195,108	(3)	

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(1) If the Company or any subsidiary thereof, at any time while this warrant is outstanding, enters into a Variable Rate Transaction ("VRT") (as defined in the purchase agreement) and the issue price, conversion price or exercise price per share applicable thereto is less than the warrant exercise price then in effect, the exercise price shall be reduced to equal the VRT price.

(2) These warrants were subject to certain anti-dilution adjustments. In August 2017, the Company issued additional common shares, which triggered a price adjustment for these warrants from $7.50 to $5.00 and the issuance of an additional warrants to purchase 433,638 common shares. While these warrants are outstanding, if the Company enters into a Fundamental Transaction, defined as a merger, consolidation or similar transaction, the Company or any successor entity will, at the option of each holder, exercisable at any time within 90 days after the consummation of the Fundamental Transaction, purchase the warrant from the holder exercising such option by paying to the holder an amount of cash equal to the Black-

Scholes Value of the remaining unexercised portion of such holder's warrant on the date of the consummation of the Fundamental Transaction. On March 16, 2018, the Company entered into warrant exchange agreements pursuant to which the Company issued 1,430,998 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. MF Ventures, LLC, participated in the Exchange by acquiring 299,999 common shares in exchange for a warrant to purchase 272,727 common shares.

(3) Includes 624,727 of warrants to purchase common shares, in the aggregate, outstanding to related parties at December 31, 2017.

Related Party Share Capital Transactions

In August 2017, the Company entered into a securities purchase agreement with certain investors pursuant to which the Company issued (i) 600,000 common shares, of which 395,000 common shares were issued to related parties, and (ii) warrants for the purchase of up to 600,000 common shares, of which 395,000 warrants were issued to related parties, in a private placement in exchange for a cash payment of $3.0 million. The purchase price was $5.00 per common share and warrant to purchase one common share, and the exercise price of the warrants is $5.25 per warrant share. The warrants were subject to certain anti-dilution adjustments through December 2017.

In July 2017, the Company entered into amended and restated warrant agreements with certain holders of warrants previously issued in March 2016 (the "Amended March 2016 Warrant") and between December 2016 and March 2017 (the "Amended March 2017 Warrants" and together with the Amended March 2016 Warrant, the "Amended and Restated Warrants"). Pursuant to the amended and restated warrant agreements, the Company issued an aggregate of 1,617,917 common shares, of which 1,315,385 common shares were issued to related parties, in exchange for the cancellation of such warrants. Immediately after the exchange, the amended and restated warrant agreements became null and void.

In March 2017, the Company entered into a securities purchase agreement with certain investors party thereto, pursuant to which the Company issued to the investors, in the aggregate, 818,182 of the Company's common shares for gross proceeds of $4.5 million. The securities purchase agreement also provided for the concurrent private placement of warrants exercisable to purchase up to 867,272 common shares. Each warrant had an exercise price of $7.50 per warrant share. MF Ventures, LLC, a related party, participated in the offering by acquiring 181,818 common shares and warrants to purchase 181,818 shares. In August 2017, the Company issued additional common shares, which triggered a price adjustment for the March 2017 warrants from $7.50 to $5.00 and the Company issued, in the aggregate, additional warrants exercisable to purchase up to 433,638 common shares, of which MF Ventures, LLC received 90,909 warrants exercisable to purchase common shares.

Between December 30, 2016 and March 16, 2017, the Company completed a private placement and issued a total of 725,599 "Units" at a purchase price of $7.50 per Unit. Each Unit consisted of one common share and one warrant from each of two series of warrants. The Company received gross proceeds of $5.4 million in connection with the sale of the Units. The warrants were exercisable to purchase 1,451,198 common shares in the aggregate. MF Ventures, LLC participated in the private placements by acquiring 333,333 common shares and warrants to purchase 666,666 common shares. Lynn Factor and Sheldon Inwentash, a married couple and related party to the Company, participated in the private placements by acquiring 213,000 common shares and warrants to purchase 426,000 common shares. An additional 28,000 common shares and warrants to purchase 56,000 common shares were acquired by ThreeD Capital Inc. Mr. Inwentash is the Chief Executive Officer of ThreeD Capital Inc. In July 2017, the warrants issued between December 30, 2016 and March 16, 2017 were null and void as a result of the Amended and Restated Warrants agreement. As of December 31, 2017, Lynn Factor and Sheldon Inwentash no longer have a significant direct or indirect ownership of the Company and are no longer are classified as a related party.

In March 2016, the Company entered into a warrant exchange agreement with MF Ventures, LLC ("MF Ventures"), a related party, pursuant to which the Company agreed to issue a warrant (the "New Warrant") for the purchase of up to 287,969 common shares (the "Warrant Shares") in exchange for the surrender and cancellation of previously outstanding warrants for the purchase of up to, in aggregate, 121,250 common shares (the "Previously Outstanding Warrants"). The terms of the New Warrant are substantially similar to the Previously Outstanding Warrants except the exercise price has changed to $30.50 per common share. On March 25, 2016, MF Ventures exercised 121,250 of the Warrant Shares for 121,250 common shares pursuant to which the Company received $3.7 million in proceeds. The expiration date for the remaining balance of the New Warrant is March 25, 2021.

9. Equity Incentive Plans

In 2017, the shareholders approved the amendment of our 2015 Performance Incentive Plan ("2015 Plan") which increased the 2015 Plan by 1.7 million shares. The 2015 Plan, as amended, authorizes the board of directors to grant stock and options awards of up to 2.1 million common shares to directors, employees and consultants. As of December 31, 2017, the Company had approximately 770,000 share-based awards available for future grant.

In 2017, the shareholders approved the amendment of our Employee Stock Purchase Plan ("ESPP") which increased the ESPP by 220,000 shares. The ESPP authorizes the purchase of up to 300,000 common shares by employees under the plan. As of December 31, 2017 and 2016, there were no offering periods available to employees.

Stock Options

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model, which uses the weighted-average assumptions noted in the following table:

	Year Ended December 31,	
	2017	2016
Expected volatility	120.0%	93.0%
Risk-free interest rate	2.1%	1.5%
Dividend yield	—	—
Expected term (in years)	4.7	4.7

The expected volatility was based on the Company's historical share price. The risk-free interest rate is determined based upon a constant maturity U.S. Treasury security with a contractual life approximating the expected term of the option. The expected term of options granted is estimated based on a number of factors, including but not limited to the vesting term of the award, historical employee exercise behavior, the expected volatility of the Company's common shares and an employee's average length of service.

Options typically vest over a three-year period from the original grant date. The exercise price of each award is based on the market price of the Company's common shares at the date of grant. Option awards can be granted for a maximum term of up to ten years. Option activity is summarized below (shares and aggregate intrinsic value in thousands):

	Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value
Options outstanding at January 1, 2016	149	$ 60.75		
Granted	—	$ —		
Exercised	—	$ —		
Forfeited	(19)	$ 113.00		
Options outstanding at December 31, 2016	130	$ 54.25		
Granted	87	$ 3.97		
Exercised	—	$ —		
Forfeited	(29)	$ 63.59		
Options outstanding at December 31, 2017	188	$ 31.40	5.2	$ —
Vested and expected to vest at December 31, 2017	188	$ 31.40	5.2	$ —
Exercisable at December 31, 2017	140	$ 40.98	5.0	$ —

The following table summarizes information about the Company's stock options (in thousands, except per share amounts):

	Year Ended December 31,	
	2017	2016
Weighted-average grant date fair value per share	$ 3.23	$ —
Intrinsic value of options exercised	$ —	$ —
Cash received upon exercise of options	$ —	$ —

Restricted Stock Units

The following table summarizes information about RSU activity (in thousands, except per share amounts):

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding — January 1, 2016	225	$ 91.50
Granted	65	$ 20.50
Vested and released	(81)	$ 83.00
Forfeited	(58)	$ 84.75
Outstanding — December 31, 2016	151	$ 64.50
Granted	1,211	$ 3.96
Vested and released	(239)	$ 33.30
Forfeited	(118)	$ 13.89
Outstanding — December 31, 2017	1,005	$ 4.89

The estimated fair value of RSUs was based on the market value of the Company's common shares on the date of grant. RSUs typically vest over a three-year period from the original date of grant. The total grant date fair value of RSUs vested during the years ended December 31, 2017 and 2016 was approximately $8.0 million and $6.8 million, respectively. The fair value of RSUs vested during the years ended December 31, 2017 and 2016 was approximately $1.2 million and $1.7 million, respectively.

Outside of 2015 Equity Incentive Plan

In 2017, the Board of Directors of the Company approved and granted 206,238 RSUs outside of the 2015 Plan to certain employees. The RSUs have an estimated fair value of $8.75 per unit and vest over one to three years.

Restricted Stock Awards

During 2017 and 2016, the Company granted restricted stock awards ("RSA") to certain consultants in lieu of cash payment for services performed. The estimated fair value of the RSAs was based on the market value of the Company's common shares on the date of grant. The RSAs were fully vested on the date of grant. The fair value of the RSAs vested during the years ended December 31, 2017 and 2016 was approximately $0.2 million and $0.5 million, respectively.

The following table summarizes information about RSA activity (in thousands, except per share amounts):

	Number of Shares	Weighted Average Grant Date Fair Value
Outstanding — January 1, 2016	—	$ —
Granted	28	$ 19.00
Vested	(28)	$ 19.00
Outstanding — December 31, 2016	—	$ —
Granted	55	$ 3.32
Vested	(55)	$ 3.32
Outstanding — December 31, 2017	—	$ —

Share-Based Compensation Expense

The Company recorded the following compensation expense related to its share-based compensation awards (in thousands):

	Year Ended December 31,	
	2017	2016
Cost of sales	$ 370	$ 366
Sales and marketing	2,095	2,773
Research and development	1,431	1,779
General and administrative	3,899	4,213
Total share-based compensation expense	$ 7,795	$ 9,131

As of December 31, 2017, there was a total of $3.0 million of unrecognized compensation expense related to unvested equity-based compensation awards. The expense associated with non-vested restricted stock units and options awards granted as of December 31, 2017 is expected to be recognized over a weighted-average period of 1.6 years.

10. Net Loss per Share

Basic net loss per share is computed by dividing net loss applicable to common shareholders by the weighted-average number of common shares outstanding during the period. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company’s net loss position.

Anti-dilutive common share equivalents excluded from the computation of diluted net loss per share were as follows (in thousands):

	December 31,	
	2017	2016
Common share purchase warrants	2,195	410
Convertible notes	327	327
Convertible notes interest	196	326
Restricted stock not yet vested or released	1,005	151
Options outstanding	188	130

11. Income Taxes

On December 22, 2017, tax legislation referred to as the Tax Cuts and Jobs Act (the “Tax Act”) was enacted. The Tax Act reduced the U.S. corporate income tax rate from 35% to 21%, effective January 1, 2018. The Company re-measured its deferred tax assets and liabilities as of December 31, 2017, applying the reduced corporate income tax rate and recorded a provisional decrease to the deferred tax assets and liabilities of $16.7 million, with a corresponding adjustment to the valuation allowance.

Due to the complexity of the Tax Act, the Company has not finalized the accounting for the effects of the Tax Legislation, including the provisional amounts recorded related to the transition tax, re-measurement of the deferred taxes and the change to the valuation allowance. The impact of the Tax Legislation may differ from the Company’s estimate, during the one-year measurement period due to, among other things, further refinement of the Company's calculation, changes in interpretations and assumptions the Company has made, and guidance that may be issued and actions the Company may take as a result of the Tax Legislation.

The Tax Act taxes certain unrepatriated earnings and profits (“E&P”) of the Company’s foreign subsidiaries. In order to determine the Transition Tax, the Company must determine, along with other information, the amount of its accumulated post 1986 E&P for its foreign subsidiaries, as well as the non U.S. income tax paid by those subsidiaries on such E&P. The Company recorded a provisional amount of U.S. taxable income of $3.5 million, which did not result in additional tax expense due to the Company’s net operating losses. The Company continues to evaluate information which may adjust the computed Transition Tax. Since the Company has significant net operating losses, any change to this provisional amount would not have an impact on the Company’s financial position or results of operations.

The Company is subject to taxation in Canada and also in certain foreign tax jurisdictions. The Company's tax returns for calendar year 2012 and forward are subject to examination by the Canadian tax authorities. The Company's tax returns for fiscal year 2006 and forward are subject to examination by the U.S. federal and state tax authorities.

The Company recognizes the impact of an uncertain income tax position on its income tax return at the largest amount that is “more likely than not” to be sustained upon audit by the relevant taxing authority. An uncertain tax position will not be recognized if it has less than a 50% likelihood of being sustained.

The following is a summary of the changes in the amount of unrecognized tax benefits (in thousands):

	December 31,	
	2017	2016
Unrecognized tax benefits, beginning of period	$ 406	$ 673
Decrease related to prior periods	—	(267)
Unrecognized tax benefits, end of period	$ 406	$ 406

At December 31, 2017, there was $0.4 million of unrecognized tax benefits presented as a reduction of the related deferred tax asset for which there is full valuation allowance, and the entire amount of the unrecognized tax benefits at December 31, 2017 will affect the effective tax rate if recognized. However, the portion that would be recognized as an increase to deferred tax assets may result in a corresponding increase in the valuation allowance at the time of recognition resulting in no net effect to the effective tax rate, depending upon the Company's assessment of the likelihood of realization of the tax benefits at the time they are recognized.

The Company believes it is reasonably possible that, within the next 12 months, the amount of unrecognized tax benefits may remain unchanged. The Company recognizes interest and penalties related to unrecognized tax benefits in its provision for income taxes. The Company had no material accrual for interest and penalties on its consolidated balance sheets at December 31, 2017 and 2016, and recognized no interest and/or penalties in the consolidated statements of operations for the years ended December 31, 2017 and 2016.

The components of loss before income taxes were as follows (in thousands):

	Year Ended December 31,	
	2017	2016
Domestic	$ (5,294)	$ (8,937)
Foreign	(22,522)	(58,698)
Total	$ (27,816)	$ (67,635)

The (benefit from) provision for income taxes includes the following (in thousands):

	Year Ended December 31,	
	2017	2016
Current:		
Federal	$ —	$ —
State	—	—
Foreign	484	476
Total current	484	476
Deferred:		
Federal	—	—
Foreign	(2,116)	349
Total deferred	(2,116)	349
(Benefit from) provision for income taxes	$ (1,632)	$ 825

A reconciliation of income taxes computed by applying the federal statutory income tax rate of 26.5% to loss before income taxes to the total income tax (benefit from) provision for reported in the accompanying consolidated statements of operations is as follows (in thousands):

	Year Ended December 31,	
	2017	2016
Income tax at statutory rate	$ (7,371)	$ (17,923)
Foreign rate differential	(2,367)	(1,652)
Change in tax rate	16,715	—
Change in valuation allowance	(12,080)	(34,477)
Share-based compensation expense	2,296	2,130
Goodwill impairment	—	8,699
Section 382 limitation	—	41,044
Other differences	1,175	3,004
(Benefit from) provision for income taxes	$ (1,632)	$ 825

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are shown below. A valuation allowance has been recorded, as realization of such assets is uncertain. Deferred income taxes are comprised as follows (in thousands):

	December 31,	
	2017	2016
Deferred tax assets:		
Net operating loss carryforward	$ 39,713	$ 48,138
Intangible assets	1,989	2,791
Tax credits	2,329	2,133
Inventory	1,112	1,906
Share-based compensation	475	920
Warranty and extended warranty	289	550
Other	2,107	2,708
Deferred tax assets, gross	48,014	59,146
Valuation allowance for deferred tax assets	(46,959)	(59,039)
Deferred tax assets, net of valuation allowance	1,055	107
Deferred tax liabilities:		
Intangible assets	(1,970)	(3,063)
Property and equipment	(172)	(144)
Deferred tax liabilities	(2,142)	(3,207)
Net deferred tax assets (liabilities)	$ (1,087)	$ (3,100)

The Company has assessed whether its valuation allowance analysis for deferred tax assets was affected by various aspects of the Tax Act (e.g., deemed repatriation of deferred foreign income, future tax on global intangible low-taxed income ("GILTI"), and new categories of foreign tax credits). Since the Company has recorded provisional amounts related to certain portions of the Tax Act, any corresponding determination of the need for or change in a valuation allowance is also provisional. The Company reduced its valuation allowance by $1.0 million as a result of the Tax Act and its effects on the realizability of its deferred tax assets.

At December 31, 2017, the Company had Canadian net operating loss carryforwards of $28.9 million. These carryforwards will begin expiring in 2031, unless previously utilized. At December 31, 2017, the Company had U.S. federal and state net operating loss carryforwards of $120.4 million and $79.2 million, respectively. The remaining federal net operating loss will begin expiring in 2023, unless previously utilized. State net operating loss carryforwards generally begin expiring in 2018, unless previously utilized.

The Company's ability to use its U.S. federal and state net operating loss and research and development credit carryforwards may be substantially limited due to ownership change limitations that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended, as well as similar state provisions. The Company has completed a study through December 31, 2014, to assess whether an ownership change has occurred or whether there have been multiple ownership changes since the Company became a "loss corporation" under the definition of Section 382. Due to the existence of the valuation allowance, it is not expected that any possible limitation will have an impact on the results of operations or financial position of the Company.

At December 31, 2017, the Company had California research and development tax credit carryforwards totaling $2.9 million. The California research credit may be carried forward indefinitely. The Company has federal alternative minimum tax credit carryforwards totaling $0.2 million which will be refundable through 2021 due to tax reform.

12. Related Party Transactions

Professional services provided by affiliates of the Company were none and $1.0 million during the years ended December 31, 2017 and 2016, respectively. As of December 31, 2017 and 2016, accounts payable and accrued liabilities included none and $17,000, respectively, due to related parties.

13. 401K Plan

The Company maintains an employee savings and retirement plan (the "401(k) Plan") covering all of the Company's U.S. employees, provided they meet the requirements of the plan. The 401(k) Plan permits but does not require matching contributions by the Company on behalf of participants. The Company has not made any matching contributions.

14. Commitments and Contingencies

Leases

The Company leases various office space, production facilities, and vehicles under non-cancelable operating leases that expire in various years through 2022. Future minimum lease payments as of December 31, 2017 under these arrangements are as follows (in thousands):

		Minimum Lease Payments
2018	$	1,697
2019		1,433
2020		855
2021		654
2022		481
Thereafter		—
Total	$	5,120

Rent expense under non-cancelable operating leases is recognized on a straight-line basis over the respective lease terms and was $1.8 million for each of the years ended December 31, 2017 and 2016, respectively.

Letters of credit

During the ordinary course of business, the Company provides standby letters of credit to third parties as required for certain transactions initiated by the Company. As of December 31, 2017 and 2016, the Company's had none and $0.4 million, respectively, of outstanding standby letters of credit.

Warranty and Extended Warranty

The Company had $0.8 million and $0.5 million in deferred costs included in other current and non-current assets related to deferred service revenue at December 31, 2017 and 2016, respectively. Changes in the liability for product warranty and deferred revenue associated with extended warranties and service contracts were as follows (in thousands):

		Product Warranty		Deferred Revenue
Liability at January 1, 2016	$	1,029	$	7,043
Settlements made during the period		(54)		(7,040)
Change in liability for warranties issued during the period		634		5,429
Change in liability for pre-existing warranties		(558)		—
Liability at December 31, 2016		1,051		5,432
Liabilities assumed from acquisition		—		518
Settlements made during the period		(703)		(6,097)
Change in liability for warranties issued during the period		678		5,819
Change in liability for pre-existing warranties		(30)		—
Liability at December 31, 2017	$	996	$	5,672
Current liability	$	791	$	4,458
Non-current liability		205		1,214
Liability at December 31, 2017	$	996	$	5,672

Litigation

The Company is, from time to time, subject to claims and suits arising in the ordinary course of business. In the opinion of management, the ultimate resolution of such pending proceedings will not have a material effect on the Company's results of operations, financial position or cash flows.

Patent Litigation Funding Agreement

In December 2010, Overland entered into a litigation funding agreement (the "Funding Agreement") with Special Situations Fund III QP, L.P., Special Situations Private Equity Fund, L.P., Special Situations Technology Fund, L.P., and Special Situations Technology Fund II, L.P. (collectively, the "Special Situations Funds") pursuant to which the Special Situations Funds agreed to fund certain patent litigation brought by Overland. In May 2014, the Special Situations Funds filed a complaint against Overland in the Supreme Court for New York County, alleging breach of the Funding Agreement. The Special Situations Funds allege that Overland's January 2014 acquisition of Tandberg Data entitled the Special Situation Funds to a $6.0 million payment under the Funding Agreement, and therefore Overland's refusal to make the payment constitutes a breach of the Funding Agreement by Overland. In November 2014, the Special Situations Funds amended their complaint to allege that Overland breached the Funding Agreement's implied covenant of good faith and fair dealing by settling the patent litigation with BDT in bad faith to avoid a payment obligation under the Funding Agreement. The Special Situations Funds are seeking $6.0 million in contractual damages as well as costs and fees. On October 10, 2017, the Court entered an order granting Overland's motion for summary judgment and dismissing the Special Situations Funds' complaint in its entirety with prejudice. The Special Situations Funds have filed a notice of appeal.

Patent Infringement

In May 2013, Safe Storage LLC ("Safe Storage"), a Delaware limited liability company, filed a complaint against Overland in the U.S. District Court for the District of Delaware alleging infringement of U.S. Patent No. 6,978,346 by our products. In February 2017, Overland and Safe Storage entered into a settlement agreement, pursuant to which the claim was dismissed.

Other

In January 2018, Mr. Vito Lupis filed a statement of claim in the Ontario Court of Justice alleging, among other things, breach of contracts, deceit and negligence against Mr. Giovanni J. Morelli, a former officer of the Company, and vicarious liability against the Company, in connection with stock purchase agreements and other related agreements that would have been entered into between Mr. Lupis and the Company in 2012. The Company believes the allegations are without merit and plans to vigorously defend itself against the allegations.

In April 2015, we filed a proof of claim in connection with bankruptcy proceedings of V3 Systems, Inc. ("V3") based on breaches by V3 of the Asset Purchase Agreement entered into between V3 and the Company dated February 11, 2014 (the "APA"). On October 6, 2015, UD Dissolution Liquidating Trust ("UD Trust"), the apparent successor to V3, filed a complaint against us and certain of our current and former directors in the U.S. Bankruptcy Court for the District of Utah Central Division objecting to our proof of claim and asserting claims for affirmative relief against us and our directors. This complaint alleges, among other things, that Sphere breached the APA and engaged in certain other actions and/or omissions that caused V3 to be unable to timely sell the Sphere common shares received by V3 pursuant to the APA. The plaintiff seeks, among other things, monetary damages for the loss of the potential earn-out consideration, the value of the common shares held back by us pursuant to the APA and costs and fees. We believe the lawsuit to be without merit and intend to vigorously defend against the action.

On December 23, 2015, we filed a motion seeking to dismiss the majority of the claims asserted by the UD Trust. On January 13, 2016, we filed a counterclaim against the UD Trust in which we allege that V3 breached numerous provisions of the APA. On July 22, 2016, we filed a motion seeking to transfer venue of this action to the United States District Court for the District of Delaware. The Bankruptcy Court granted our motion to transfer venue on August 30, 2016, and the case was formally transferred to the Delaware Court on October 11, 2016. There is currently no hearing set on our motion to dismiss.

15. Segmented Information

The Company reports segment information as a single reportable business segment based upon the manner in which related information is organized, reviewed, and managed. The Company operates in one segment providing data storage and desktop virtualization solutions for small and medium businesses and distributed enterprises. The Company conducts business globally, and its sales and support activities are managed on a geographic basis. Our management reviews financial information presented on a consolidated basis, accompanied by disaggregated information it receives from its internal management system about revenues by geographic region, based on the location from which the customer relationship is managed, for purposes of allocating resources and evaluating financial performance.

Information about Products and Services

The following table summarizes net revenue (in thousands):

	Year Ended December 31,	
	2017	2016
Disk systems	$ 52,486	$ 46,795
Tape automation systems	9,718	10,297
Tape drives and media	10,615	10,973
Service	8,704	8,328
	$ 81,523	$ 76,393

Information about Geographic Areas

The Company markets its products domestically and internationally, with its principal international market being Europe. Revenue is attributed to the location to which the product was shipped. The Company divides its worldwide sales into three geographical regions: EMEA, consisting of Europe, the Middle East and Africa; Americas; and APAC, consisting of Asia Pacific countries.

The following table summarizes net revenue by geographic area (in thousands):

	Year Ended December 31,	
	2017	2016
EMEA	$ 37,365	$ 39,719
Americas	28,213	23,043
APAC	15,945	13,631
Total	$ 81,523	$ 76,393

During 2017 and 2016, there were two geographic areas with specific concentrations of net revenue greater than 10%. Revenues from customers in the U.S. comprised $27.1 million and $20.1 million of Americas net revenue during the years ended December 31, 2017 and 2016, respectively. Revenue from customers in Germany accounted for $19.0 million and $19.6 million of EMEA’s net revenue during the years ended December 31, 2017 and 2016, respectively.

The following table presents property and equipment information for geographic areas based on the physical location of the assets (in thousands):

	Year Ended December 31,	
	2017	2016
EMEA	$ 1,871	$ 1,703
Americas	520	937
APAC	351	418
Total	$ 2,742	$ 3,058

16. Subsequent Events

Warrant Exchange Agreement

On March 16, 2018, the Company entered into warrant exchange agreements, in a privately negotiated exchange under Section 4(a)(2) of the Securities Act of 1933, as amended, pursuant to which the Company issued 1,430,998 common shares in exchange for the surrender and cancellation of the Company's outstanding March 24, 2017 warrants (the "Exchange"). Immediately after the Exchange, the previously issued warrants became null and void. MF Ventures, LLC, participated in the Exchange by acquiring 299,999 common shares in exchange for a warrant to purchase 272,727 common shares.

Related Party Share Purchase Agreement

On February 20, 2018, the Company, Overland, and Silicon Valley Technology Partners LLC, a Delaware limited liability company established and controlled by Eric Kelly, the Company's Chief Executive Officer and Chairman of the Board of Directors (the "Purchaser") entered into a share purchase agreement (the "Purchase Agreement"), pursuant to which, among other things, and subject to certain closing conditions, the Company will sell to Purchaser all of the issued and outstanding shares of capital stock of Overland for $45.0 million (the "Purchase Price"), subject to a working capital adjustment (the "Share Purchase"). The net proceeds from the Share Purchase will be used to repay: (i) the Company's outstanding obligations under its Credit Agreement with Opus Bank; (ii) its outstanding obligations under the related party convertible note with FBC Holdings S.a.r.l. ("FBC Holdings"); and (iii) its related party subordinated promissory note with MF Ventures, LLC. The Special Committee of the Board of Directors of the Company and the Board of Directors of the Company (with Eric Kelly recusing himself) unanimously approved the entry into the Purchase Agreement by the Company. See *Note 1 - Organization and Business* for additional details.

Exhibit 10.48

AMENDED AND RESTATED RETENTION AGREEMENT

This Amended and Restated Retention Agreement (this "**Agreement**") is entered into as of December 18, 2017 between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario (the "**Company**"), and Eric Kelly ("**Employee**"). This Agreement amends and restates in its entirety the Retention Agreement between Employee and Overland Storage, Inc., a California corporation, dated June 24, 2009 (the "**Prior Agreement**").

AGREEMENT

WHEREAS, Employee is the Chief Executive Officer of the Company;

WHEREAS, the Company considers that providing Employee with certain benefits as provided herein in the event of a Change of Control will operate as an incentive for Employee to remain employed by the Company in the event of a Change of Control; and

WHEREAS, the Company and Employee are also parties to an Employment Agreement dated August 3, 2011 (the "**Employment Agreement**").

NOW THEREFORE, for the consideration stated above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and Employee agree as follows:

1. <u>Definitions</u>.

1.1. "**Base Salary**" shall mean the Employee's gross annual salary at the time of a Change of Control (or on the Termination Date, if higher and such Termination Date occurs before the Change of Control).

1.2. "**Cause**" shall mean:

(a) Employee's gross neglect of his duties to the Company, where Employee has been given a reasonable opportunity of not less than 30 days to cure his gross neglect after receiving written notice from the Company's Board of Directors (the "**Board**") (which reasonable opportunity must be granted during the thirty-day period preceding termination);

(b) any material breach by Employee of Employee's obligations under this Agreement or any employment agreement which Employee may have with the Company ,which Employee fails to cure within 30 days after receiving written notice from the Board; or

(c) Employee's commission of any act of fraud, theft or embezzlement against the Company.

1.3. "**Change of Control**" is defined to have occurred if, and only if, during Employee's employment:

(a) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be 'a person under Section 14(d)(2) of the Exchange Act is or becomes the "Beneficial Owner" (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote in the election of directors of the Company;

(b) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company ("**Transaction**"), in each case, with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than fifty percent (50%) of the combined voting power of the Company or other corporation resulting from such Transaction; or

(c) there occurs a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) fiscal quarters.

1.4. "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

1.5. "**Resignation for Good Reason**" shall mean the voluntary resignation by Employee of his employment with the Company within six (6) months of the occurrence of any of the following Good Reasons:

(a) any reduction in Employee's Base Salary or Target Bonus by more than ten percent (10%); or

(b) any material reduction in Employee's duties, responsibilities and authority;

(c) a relocation by the Company of Employee's place of employment with the Company outside a fifty (50) mile radius of Employee's current place of employment as of the date hereof; provided, however, that "Good Reason" shall not include relocation to a location within thirty (30) miles of Employee's Danville, California residence; or

(d) a material breach of this Agreement or the Employment Agreement by the Company.

An event described in Section 1.5(a) through (d) will not constitute Good Reason unless Employee provides written notice to the Company within sixty (60) days of the Good Reason event of his intention to resign for Good Reason and unless the Company does not cure or remedy the alleged Good Reason condition within thirty (30) days of the Company's receipt of the written notice.

1.6. "**Target Bonus**" shall mean the variable annual compensation represented by the percentage of Base Salary Employee is eligible to receive, if any, prior to a Change of Control, in the event targeted goals are achieved for the year.

1.7. "**Termination Date**" shall mean the date of termination of Employee's employment relationship with the Company.

2. Title and Duties. Employee will hold the position of Chief Executive Officer in accordance with the terms and conditions of the Employment Agreement.

3. At-Will Employment. Employee reaffirms that Employee's employment relationship with the Company is at-will, terminable at any time and for any reason by either the Company or Employee, subject to the terms of the Employment Agreement. While certain paragraphs of this Agreement describe events that could occur at a particular time in the future, nothing in this Agreement may be construed as a guarantee of employment of any length.

4. Retention Payments.

4.1. Subject in each case to Sections 4.2 and 4.3, if a Change of Control occurs and either (x) Employee remains employed with the Company as of immediately prior to the Change of Control or (y) during the period of sixty (60) days before the Change of Control, Employee's employment with the Company is terminated by the Company without Cause or by Employee's Resignation for Good Reason, Employee shall be entitled to the following benefits:

(a) Employee will be entitled to payment in cash of a lump-sum amount equal to 150% of Base Salary plus 150% of Target Bonus, less applicable state and federal taxes or other payroll deductions, such amount to be paid (subject to Section 9) on the first business day after the Release becomes effective or, if later, promptly after the Change in Control and in all events no later than sixty (60) days after the Change of Control (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years); and

(b) Following Employee's termination of employment either by the Company without Cause or pursuant to Employee's Resignation for Good Reason (in any case occurring at any time on or after the date that is sixty (60) days before the Change of Control), (i) if Employee elects to continue insurance coverage as afforded to Employee according to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), Company will reimburse Employee the estimated amount of the premiums incurred by Employee during the period of eighteen (18) months following Employee's Termination Date, and (ii) the Company will reimburse Employee for the estimated costs to continue life, accident, medical and dental insurance benefits for Employee and his eligible dependents during such 18-month period in amounts substantially similar to those which Employee was entitled to receive under the Employment Agreement immediately prior to Employee's Termination Date (which amount shall be reduced by the amount of any reimbursements made by the Company to Employee pursuant to clause (b)(i) above), the estimated costs of which shall be paid to Executive (subject to Section 9) in one lump sum payment on the first business day after the Release becomes effective and in all events within sixty (60) days after the Termination Date (and any actual costs in excess of such estimate shall be paid to Executive no later than ten (10) days following his submission of written evidence of the amount of such excess), provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years. Nothing in this Agreement will extend Employee's COBRA period beyond the period allowed under COBRA, nor is Company assuming any responsibility which Employee has for formally electing to continue coverage; and

(c) Any portion of Employee's then outstanding stock options and other equity-based awards granted by the Company that are not vested shall immediately vest on the Change in Control and, in the case of stock options and similar awards, may be exercised in whole or in part within one year following the date of Employee's termination of employment, subject to earlier termination upon the expiration of the maximum term of the applicable options or in connection with a corporate transaction involving the Company to the extent provided in the Plan and/or the award agreements that evidence such options. In the case of a termination of Employee's employment described in clause (y) above of this Section 4.1, any such stock option or other equity-based award, to the extent such award had not vested and was cancelled or otherwise terminated upon or prior to the date of the related Change of Control solely as a result of such termination of employment, shall be reinstated and shall automatically become fully vested.

4.2. The payments set forth in Sections 4.1(a) and 4.1(b) above are in exchange for, and contingent upon Employee's execution and non-revocation of, a release of all claims as of the date of the Change of Control in substantially the form attached to this Agreement as Exhibit A (the "**Release**").

4.3. For avoidance of doubt, consistent with Section 5 of the Employment Agreement, if a Change of Control occurs and Employee is entitled to the benefits provided in Section 4.1 above, Employee will not be entitled to any severance benefits under Section 4 of the Employment Agreement. To the extent Employee has received any severance benefits under Section 4 of the Employment Agreement with respect to a termination of Employee's employment that occurs prior to a Change of Control, Employee's benefits under this Agreement shall be reduced on a dollar-for-dollar basis by the amount of any such severance benefits paid to Employee under the Employment Agreement (provided that such offset shall not apply with respect to Employee's Standard Entitlements (as defined in the Employment Agreement) paid in connection with such termination of Employee's employment). In addition, only the first Change of Control that occurs after the date of this Agreement will be taken into account for purposes of this Agreement, and any Change of Control that may occur thereafter will be disregarded.

5. Retirement and Profit-Sharing Plans. Notwithstanding anything in this Agreement to the contrary, Employee's rights in any retirement, pension or profit-sharing plans offered by the Company shall be governed by the rules of such plans as well as by applicable law.

6. Tax Consequences. The Company makes no representations regarding the tax consequence of any provision of this Agreement. Employee is advised to consult with his own tax advisor with respect to the tax treatment of any payment contained in this Agreement.

7. Tax Adjustment. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, if it is determined that any portion of any payment under this Agreement would constitute an "excess parachute payment" within the meaning of Section 280G of the U.S. Internal Revenue Code (the "**Code**"), the payments to be made to Employee under this Agreement shall be reduced (but not below zero) such that the value of the aggregate payments that Employee is entitled to receive under this Agreement and any other agreement or plan or program of the Company shall be one dollar ($1) less than the maximum amount of payments which Employee may receive without becoming subject to the tax imposed by Section 4999 of the Code; provided that such reduction to the payments to be made to Employee under this Agreement shall be made only if the total after-tax benefit to Employee is greater after giving effect to such reduction than if no such reduction had been made. The determination that a payment is (or, if no reduction were made pursuant to this Section 7, would be) an "excess parachute payment" shall be made in writing by a nationally recognized accounting firm or executive compensation consulting firm selected by the Company and acceptable to Employee (the "**Accounting Firm**"). The Accounting Firm's determination shall include detailed computations thereof, including any assumptions used in such computations. Any determination by the Accounting Firm will be binding on the Company and Employee.

8. <u>Agreement to Arbitrate</u>. Employee and Company agree to arbitrate any claim or dispute ("**Dispute**") arising out of or in any way related to this Agreement, the employment relationship between Company and Employee or the termination of Employee's employment, except as provided in Section 8.1 below, to the fullest extent permitted by law. Except as provided above, this method of resolving Disputes shall be the sole and exclusive remedy of the parties. Accordingly, the parties understand that, except as provided herein, they are giving up their rights to have their disputes decided in a court of law and, if applicable, by a jury, and instead agree that their disputes shall be decided by an arbitrator.

8.1. *Scope of the Agreement*. A Dispute shall include all disputes or claims between Employee and Company arising out of, concerning or relating to Employee's employment by Company, including, without limitation: claims for breach of contract, tort, discrimination, harassment, wrongful termination, demotion, discipline, failure to accommodate, compensation or benefits claims, constitutional claims and claims for violation of any local, state or federal law, or common law, to the fullest extent permitted by law. A Dispute shall not include any dispute or claim, whether brought by either Employee or Company, for: (a) workers' compensation or unemployment insurance benefits; or (b) the exclusions from arbitration specified in the California Arbitration Act, California Code of Civil Procedure section 1281.8. For the purpose of this Agreement, references to "**Employer**" include Company and all related or affiliated entities and their employees, supervisors, officers, directors, owners, stockholders, agents, pension or benefit plans, pension or benefit plan sponsors, fiduciaries, administrators, and the successors and assigns of any of them, and this Section 8 shall apply to them to the extent that Employee's claims arise out of or relate to their actions on behalf of Company.

8.2. *Consideration*. The parties agree that their mutual promise to arbitrate any and all disputes between them, except as provided in Section 8.1, rather than litigate them before the courts or other bodies, provides adequate consideration for this Section 8.

8.3. *Initiation of Arbitration*. Either party may initiate an arbitration proceeding by providing the other party with written notice of any and all claims forming the basis of such proceeding in sufficient detail to inform the other party of the substance of such claims. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims would be barred by the applicable statute of limitations.

8.4. *Arbitration Procedure*. The arbitration will be conducted by JAMS pursuant to its Rules for the Resolution of Employment Disputes in San Diego, California by a single, neutral arbitrator. The parties are entitled to representation by an attorney or other representative of their choosing. The arbitrator shall have the power to enter any award that could be entered by a judge of the Superior Court of the State of California, as applicable to the cause of action, and only such power. The arbitrator shall issue a written and signed statement of the basis of the arbitrator's decision, including findings of fact and conclusions of law. The parties agree to abide by and perform any award rendered by the arbitrator. Judgment on the award may be entered in any court having jurisdiction thereof

8.5. *Costs of Arbitration*. If Employee initiates arbitration against the Company, Employee must pay a filing fee equal to the current filing fee in the appropriate court had Employee's claim been brought there, and the Company shall bear the remaining filing fees and all other costs of the arbitration forum, including arbitrator fees, case management fees, and forum hearing fees (the "**Arbitration Fees**"). If the Company initiates arbitration against Employee, the Company shall bear the entire cost of the arbitration forum, including arbitrator fees. (Such costs do not include costs of attorneys, discovery, expert witnesses, or other costs which Employee would have been required to bear had the matter been filed in a court.) The arbitrator may award attorneys' fees and costs to the prevailing party, except that Employee shall have no obligation to pay any of the Arbitration Fees even if the Company is deemed the prevailing party. If there is any dispute as to whether the Company or Employee is the prevailing party, the arbitrator will decide that issue. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation, unless the arbitrator determines that such fee would cause undue hardship on the party. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award imposed against that party.

8.6. *Governing Law*. All Disputes between the parties shall be governed, determined and resolved by the internal laws of the State of California, including the California Arbitration Act, California Code of Civil Procedure 1280 et seq.

8.7. *Discovery*. The parties may obtain discovery in aid of the arbitration to the fullest extent permitted under law, including California Code of Civil Procedure Section 1283.05. All discovery disputes shall be resolved by the arbitrator.

9. IRC Section 409A. Notwithstanding anything to the contrary, if, at the time of his separation of service from the Company, Employee is a "specified employee" as defined pursuant to Internal Revenue Code Section 409A, and if the amounts that Employee is entitled to receive pursuant to this Agreement are not otherwise exempt from Code Section 409A, then to the extent necessary to comply with Code Section 409A, no payments for such amounts may be made under this Agreement before the date which is six (6) months after Employee's separation of service from the Company or, if earlier, Employee's date of death. All such amounts, which would have otherwise been required to be paid during such six (6) months after Employee's separation of service shall instead be paid to Employee in one lump sum payment on the first business day of the seventh month after Employee's separation of service from the Company or, if earlier, Employee's date of death. All such remaining payments shall be made pursuant to their original terms and conditions. This Agreement is intended to comply with the applicable requirements of Code Section 409A and shall be construed and interpreted in accordance therewith. The Company may at any time amend this Agreement, or any payments to be made hereunder, as necessary to be in compliance with Code Section 409A and avoid the imposition on Employee of any potential excise taxes relating to Code Section 409A. Any reimbursements pursuant to the foregoing provisions of this Agreement shall be paid as soon as reasonably practicable and in all events not later than the end of Employee's taxable year following the taxable year in which the related expense was incurred. Employee's rights to reimbursement hereunder are not subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement in one taxable year shall not affect the amount of expenses eligible for reimbursement in any other taxable year.

10. General Provisions.

10.1. *Governing Law*. This Agreement will be governed by and construed in accordance with the laws of California.

10.2. *Assignment*. Employee may not assign, pledge or encumber his interest in this Agreement or any part thereof. The Company shall require a purchaser of all or substantially all the assets of the Company to assume all of the Company's liabilities under this Agreement, and the Company would thereby be relieved of all such liabilities, provided that Employee accepts employment with such purchaser at the closing of the transaction.

10.3. *No Waiver of Breach*. The failure to enforce any provision of this Agreement will not be construed as a waiver of any such provision, nor prevent a party from enforcing the provision or any other provision of this Agreement. The rights granted the parties are cumulative, and the election of one will not constitute a waiver of such party's right to assert all other legal and equitable remedies available under the circumstances.

10.4. *Severability*. The provisions of this Agreement are severable, and if any provision will be held to be invalid or otherwise unenforceable, in whole or in part, the remainder of the provisions, or enforceable parts of this Agreement, will not be affected.

10.5. *Entire Agreement*. This Agreement, together with the Employment Agreement, constitutes the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous negotiations, agreements and understandings between the parties, oral or written (including, without limitation, the Prior Agreement).

10.6. *Modification; Waivers*. No modification, termination or attempted waiver of this Agreement will be valid unless in writing, signed by the party against whom such modification, termination or waiver is sought to be enforced.

10.7. *Amendment*. This Agreement may be amended or supplemented only by a writing signed by both of the parties hereto.

10.8. *Duplicate Counterparts*. This Agreement may be executed in any number of original, facsimile or .PDF counterparts; each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.9. *Interpretation*. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

10.10. *Drafting Ambiguities*. Each party to this Agreement and its counsel have reviewed and revised this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any of the amendments to this Agreement.

10.11. *Recovery of Attorney's Fees and Expenses*. If any litigation shall occur between Employee and Employer which arises out of or as a result of this Agreement, or which seeks an interpretation of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, however, that, regardless of whether Employee prevails with respect to any dispute or litigation between the parties, Employee shall in no event be required to pay any portion of the Arbitration Fees and the Employer shall pay up to Twenty-Five Thousand Dollars ($25,000) in legal fees and related expenses incurred by Employee as a result of (i) his termination following a Change of Control (including all such fees and expenses, if any, incurred in contesting or disputing such termination) or (ii) Employee seeking to obtain or enforce any right or benefit provided by this Agreement following a Change of Control.

Company:

SPHERE 3D CORP.

/s/ Duncan J. McEwan

Duncan J. McEwan
Chair of the Compensation Committee

Employee:

/s/ Eric Kelly
Eric Kelly
Chief Executive Officer

EXHIBIT A

GENERAL RELEASE

This General Release ("**Release**") is entered into effective as of _________________ (the "**Effective Date**") between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario (the "**Company**"), and Eric Kelly, an individual residing at _________________ ("**Employee**") with reference to the following facts:

RECITALS

A. The parties entered into an Amended and Restated Retention Agreement effective as of December 18, 2017 (the "**Agreement**") pursuant to which the parties agreed that, upon the occurrence of certain conditions, Employee would become eligible for certain benefits provided in the Agreement in exchange for Employee's release of the Company from all claims which Employee may have against the Company as of the date of this Release. All capitalized terms that are not defined herein shall have the meaning set forth in the Agreement.

B. The parties desire to dispose of, fully and completely, all claims, which Employee may have against the Company in, the manner set forth in this Release.

AGREEMENT

1. Consideration. The Company shall provide Employee those payments and benefits provided in Sections 4.1(a) and 4.1(b) of the Agreement.

2. Release. Employee, for himself and his heirs, successors and assigns, fully releases and discharges the Company, its officers, directors, employees, shareholders, attorneys, accountants, other professionals, insurers and agents (collectively, "**Agents**"), and all entities related to each party, including, but not limited to, heirs, executors, administrators, personal representatives, assigns, parent, subsidiary and sister corporations, affiliates, partners and co venturers (collectively, "**Related Entities**"), from all rights, claims, demands, actions, causes of action, liabilities and obligations of every kind, nature and description whatsoever, Employee now has, owns or holds or has at anytime had, owned or held or may have against the Company, Agents or Related Entities from any source whatsoever, whether or not arising from or related to the facts recited in this Release. Employee specifically releases and waives any and all claims arising under any express or implied contract, rule, regulation or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Labor Code and the Age Discrimination in Employment Act, as amended ("**ADEA**"). Employee acknowledges that the Company has paid Employee all wages, bonuses, accrued unused vacation pay, options, benefits and monies owed by the Company to Employee. This release does not waive any claims for (a) indemnification and/or payment of related expenses under (i) any applicable law and/or (ii) the Company's bylaws or articles of incorporation; (b) Employee's ownership of any Company stock, vested stock units or stock options, and/or Employee's rights as an existing shareholder of the Company; (c) any rights Employee has under any applicable stock option plan of the Company and/or any stock option, stock unit, stock purchase or other stockholder agreements with Company; (d) any vested rights or claims Employee may have under any Company-sponsored benefit plans (including without limitation, any medical, dental, disability, life insurance or retirement plans); (e) any rights Employee may have to obtain continued health insurance coverage or other benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), and/or any similar state law; (f) any claims Employee may have against the Company for reimbursement of business or other expenses incurred in connection with Employee's employment with Company; (g) any other claim which as a matter of law cannot be waived, or (h) any obligation of the Company to Employee pursuant to the Agreement. Notwithstanding anything to the contrary herein, nothing in this Release prohibits Employee from filing a charge with or participating in an investigation conducted by any state or federal government agencies. However, Employee does waive, to the maximum extent permitted by law, the right to receive any monetary or other recovery, should any agency or any other person pursue any claims on Employee's behalf arising out of any claim released pursuant to this Release. For clarity, and as required by law, such waiver does not prevent Employee from accepting a whistleblower

award from the Securities and Exchange Commission pursuant to Section 21F of the Securities Exchange Act of 1934, as amended. Employee acknowledges and agrees that he has received any and all leave and other benefits that he has been and is entitled to pursuant to the Family and Medical Leave Act of 1993. Employee represents and warrants to the Company that he has not heretofore assigned or transferred to any person not a party to this Release any released matter or any part or portion thereof.

3. Section 1542 Waiver. This Release is intended as a full and complete release and discharge of any and all claims that Employee may have against the Company, Agents or Related Entities. In making this release, Employee intends to release each of the Company, Agents and Related Entities from liability of any nature whatsoever for any claim of damages or injury or for equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown to him. Employee expressly waives all rights under Section 1542 of the California Civil Code, which Employee understands provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee acknowledges that he may discover facts different from or in addition to those that he now believes to be true with respect to this Release. Employee agrees that this Release shall remain effective notwithstanding the discovery of any different or additional facts.

4. ADEA Waiver. Employee expressly acknowledges and agrees that by entering into this Release, he is waiving any and all rights or claims that he may have arising under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), and that this waiver and release is knowing and voluntary. Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the date Employee signs this Release. Employee further expressly acknowledges and agrees that:

(a) In return for this Release, he will receive consideration beyond that which he was already entitled to receive before executing this Release;

(b) He is hereby advised in writing by this Release to consult with an attorney before signing this Release;

(c) He was given a copy of this Release on [__________, 2017], and informed that he had **[**twenty-one (21)**]** days within which to consider this Release and that if he wished to execute this Release prior to the expiration of such **[**21**]**-day period he will have done so voluntarily and with full knowledge that he is waiving his right to have **[**twenty-one (21)**]** days to consider this Release; and that such **[**twenty-one (21)**]** day period to consider this Release would not and will not be re-started or extended based on any changes, whether material or immaterial, that are or were made to this Release in such **[**twenty-one (21)**]** day period after he received it;

(d) He was informed that he had seven (7) days following the date of execution of this Release in which to revoke this Release, and this Release will become null and void if Employee elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event that Employee exercises this revocation right, neither the Company nor Employee will have any obligation under this Release. Any notice of revocation should be sent by Employee in writing to the Company (attention [______________]), [Address], so that it is received within the seven-day period following execution of this Release by Employee.

(e) Nothing in this Release prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law.

5. No Undue Influence. This Release is executed voluntarily and without any duress or undue influence. Employee acknowledges that he has read this Release and executed it with his full and free consent. No provision of this Release shall be construed against any party by virtue of the fact that such party or its counsel drafted such provision or the entirety of this Release.

6. Governing Law. This Release is made and entered into in the State of California and accordingly the rights and obligations of the parties hereunder shall in all respects be construed, interpreted, enforced and governed in accordance with the laws of the State of California as applied to contracts entered into by and between residents of California to be wholly performed within California.

7. Severability. If any provision of this Release is held to be invalid, void or unenforceable, the balance of the provisions of this Release shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

8. Counterparts. This Release may be executed simultaneously in one or more original, facsimile, or .PDF counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Release may be executed by facsimile, with originals to follow by overnight courier.

9. Dispute Resolution Procedures. Any dispute or claim arising out of this Release shall be subject to final and binding arbitration in accordance with the procedures, terms and conditions set forth Section 8 of the Agreement, which terms are incorporated herein by reference.

10. Entire Agreement. This Release constitutes the entire agreement of the parties with respect to the subject matter of this Release, and supersedes all prior and contemporaneous negotiations, agreements and understandings between the parties, oral or written, including, without limitation, the Agreement, between the Company and Employee; provided, however, that this Release shall not terminate the Company's obligations under Section 4, 7, 8, 9 and 10.11 of the Agreement.

11. Modification; Waivers. No modification, termination or attempted waiver of this Release will be valid unless in writing, signed by the party against whom such modification, termination or waiver is sought to be enforced.

12. Amendment. This Release may be amended or supplemented only by a writing signed by Employee and the Company.

Dated: __ __

Printed Name: ______________________________________

AMENDED AND RESTATED
EMPLOYMENT AND SEVERANCE AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AND SEVERANCE AGREEMENT (this "**Agreement**") is entered into between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario ("**Employer**" or the "**Company**"), and Kurt L. Kalbfleisch ("**Executive**") as of December 18, 2017 (the "**Effective Date**"). This Agreement amends and restates in its entirety the Employment and Severance Agreement between Overland Storage, Inc., a California corporation, and Executive dated as of August 3, 2011 (the "**Prior Agreement**") and is effective on the Effective Date.

The parties agree as follows:

1. **<u>Positions And Duties</u>**. Executive shall continue to be employed by the Company in the position of Senior Vice President and Chief Financial Officer ("**CFO**"), reporting to the Chief Executive Officer ("**CEO**"), and shall do and perform all services, acts or things necessary or advisable to support the business of the Company. Executive shall also perform such duties that are normally associated with the position of CFO consistent with the bylaws of the Company and such other duties as may be requested by the CEO. Termination of Executive as an officer of the Company for any reason shall also constitute the resignation by Executive, effective upon such termination, of any and all offices or positions with the Company or any affiliate of the Company. Upon request, Executive shall provide the Company with additional written evidence of any such resignation.

1.1 **<u>Best Efforts/Full-Time</u>**. During the Employment Term (as defined in Section 1.2 herein), Executive will act in the best interests of Employer and devote his full business time and best efforts to the performance of his duties under this Agreement. Executive agrees to be available to render such services at all reasonable times and places and in accordance with Employer's directives. Executive shall be assigned to work in the Company's corporate offices in San Diego, California, but may be required to travel in connection with his duties. Executive will abide by all policies, procedures, and decisions made by Employer, as well as all federal, state and local laws, regulations or ordinances applicable to his employment. During his employment, Executive must not engage in any work, paid or unpaid, that creates an actual or potential conflict of interest with Employer's business interests and if, in the opinion of the CEO or the Company's Board of Directors (the "**Board**"), an actual or potential conflict exists, the CEO or Board may in its sole discretion require Executive to choose either to (i) discontinue the other work or (ii) resign without Good Reason from his employment with Employer. The foregoing restriction shall not preclude Executive from engaging in civic, charitable or religious activities, or from serving on boards of directors of companies or organizations so long such services do not pose a material conflict or materially interfere with his responsibilities to Employer. It is anticipated that Executive will generally devote no less than 40 hours per week to his duties for Employer unless he is on vacation or a leave of absence in accordance with the terms of this Agreement or the Company's policies as in effect from time to time.

1.2 **<u>Term Of Employment</u>**. Unless terminated in accordance with Section 4, Executive's employment shall automatically renew for an additional one year term on each anniversary of the Effective Date (the period of employment hereunder shall be referred to herein as the "**Employment Term**"). This Agreement shall continue during the Employment Term to govern the terms and conditions of Executive's employment, unless modified by the parties hereto in writing.

1.3 **<u>Termination</u>**. Executive reaffirms that Executive's employment relationship with the Company is at will and is terminable at any time and for any reason by either the Company or Executive, subject to the provisions hereof.

2. Compensation.

2.1 Base Salary. As of the Effective Date and as compensation for the proper and satisfactory performance of all duties under this Agreement, Executive shall earn a gross annual base salary of $300,000 ($12,500 gross per bi-weekly payroll period), less applicable state and federal taxes and other authorized payroll deductions, payable in accordance with Employer's normal payroll practices but in no event less frequently than once per month (the "**Base Salary**").

2.2 Bonus. Executive will be eligible to receive potential quarterly or annual cash bonuses solely as determined (if any) from time to time by the Board or duly authorized committee thereof (and in each case in the sole discretion of the Board or duly authorized committee thereof). Any such bonuses will be based on the Company's fiscal quarters or fiscal year, and will be paid to Executive within 74 days following the end of such fiscal quarter or year. If Executive's employment terminates before the end of a fiscal quarter or year under Section 4.2, Section 4.3 or Section 4.5, Executive shall be eligible to receive a prorated amount of any target bonus that may be established and in effect ("**Target Bonus**") for the fiscal quarter or year in which Executive's employment with the Company terminates. If Executive's employment terminates before the end of a fiscal quarter or year under Section 4.4, Executive shall be eligible to receive a prorated amount of bonus actually earned in accordance with the terms and conditions of the Company's bonus program for the fiscal quarter or year in which Executive's employment with the Company terminates. If Executive's employment terminates before the end of a fiscal quarter or year under Section 4.1, Executive shall not be eligible to receive a bonus for that fiscal quarter or year. Executive's bonus hereunder shall be calculated based upon financial and management objectives reasonably established for Employer and Executive by the Board or a duly authorized committee thereof.

2.3 Equity Incentives. Executive will be eligible to receive stock options or other equity incentives as determined from time to time by the Board or duly authorized committee thereof, and in each case in its sole discretion and in accordance with terms and conditions determined by the Board or duly authorized committee thereof.

2.4 Unilateral Modification of Compensation. Subject to Executive's right to resign for Good Reason under Section 4.3 of this Agreement, Employer reserves the right to modify Executive's cash compensation, at any time, at its sole and absolute discretion.

3. Customary Fringe Benefits. Executive shall be eligible for customary and usual benefits generally available to executive level employees of Employer, subject to the terms and conditions set forth in the applicable benefit plan or policy, including reimbursement for all eligible out of pocket expenses currently covered under the Company's executive reimbursement policy. Employer reserves the right to change or eliminate any of the fringe benefits provided to executive level employees on a prospective basis at any time, at Employer's sole and absolute discretion; provided, however, that Executive may, in his discretion, retain, or obtain, his personal life, accident, medical, dental, vision and/or other insurance plans and benefits, the costs of which shall be reimbursed by the Company to Executive (not to exceed the total cost of comparable benefits offered by the Company to Executive and his dependents through the Company's plans). Executive understands that all benefits provided in this section may be reduced by, or subject to, all applicable taxes. Executive shall be eligible for paid annual flexible time off and all paid Employer holidays, each in accordance with the Employer's standard policies as apply to other executive employees of the Company. Executive will be reimbursed for all reasonable, out-of-pocket business expenses incurred in the performance of his duties on behalf of Employer subject to Executive's compliance with the Company's established expense reimbursement policy. Reimbursement for air travel shall be subject to the Employer's generally applicable travel expense reimbursement policies.

4. Termination.

4.1 Termination For Cause By Employer. Employer may terminate Executive's employment under this Agreement immediately at any time for "**Cause**," which shall include, but is not limited to: (a) acts or omissions constituting reckless or willful misconduct on the part of Executive with respect to his obligations or otherwise relating to the business of Employer that causes material harm to the Company or its reputation; (b) Executive's material breach of this Agreement, which breach Executive fails to cure within 30 days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) Executive's conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) Executive's willful neglect of duties, as reasonably determined by the Board, which Executive fails to cure within 30 days after receiving written notice from the Board that specifies the specific duties that Executive has failed to perform.

4.1.1 Entitlements Upon Termination For Cause. In the event that Executive's employment is terminated for Cause in accordance with Section 4.1, Executive shall be entitled to receive: (a) the Base Salary then in effect through the date of termination; (b) the amount of any unpaid bonus to which Executive is then entitled pursuant to Section 2.2, if any; and (c) any expense reimbursements to which Executive is entitled by virtue of his prior employment with Employer (collectively, (a), (b) and (c) above are referred to herein as the "**Standard Entitlements**"). The Standard Entitlements shall be paid to such Executive within 30 days following termination or earlier if required by law. In the event of such termination for Cause, Executive shall not be entitled to receive (i) the Severance Payment or Accelerated Vesting and Extended Exercise Period Severance Benefit (as each are defined in Section 4.2 below) or any portion thereof, or (ii) any further vesting of stock options, and all other obligations of Employer to Executive pursuant to this Agreement shall automatically terminate and be completely extinguished.

4.2 Termination Without Cause By Employer More Than Sixty Days Prior to Change of Control. Employer may terminate Executive's employment without Cause at any time and for any (or no) reason. If, at any time more than sixty (60) days prior to a Change of Control, Employer terminates Executive's employment without Cause (including, for purposes of clarity, a termination by the Employer at the end of the term then in effect under Section 1.2), Executive shall be entitled to receive the Standard Entitlements, which shall be paid to Executive within 30 days following termination or earlier if required by law. In addition to the above, so long as Executive timely complies with all of the conditions in Section 4.2.1 below, Executive will be entitled to an aggregate severance payment equal to the sum of (i) an amount equal to one hundred percent (100%) of the greater of Executive's then Base Salary or original Base Salary, plus (ii) a portion of the Target Bonus prorated based on the number of days Executive was employed during the period on which the Target Bonus is based, plus (iii) an amount equal to the premiums Executive would be required to pay to continue life, accident, medical, dental and vision insurance coverage under the Company's insurance plans for Executive and his eligible dependents pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") for a period of twelve (12) months following the date of termination, plus (iv) the amount necessary for Executive to continue life, accident, medical, dental and vision insurance benefits for Executive and his eligible dependents for insurance coverage that he personally maintained in amounts substantially similar to those which Executive was entitled to receive under Section 3 of this Agreement immediately prior to the date of termination for a period of twelve (12) months following the date of termination (without duplication of any reimbursements made by the Company to Executive for such coverage pursuant to clause (iii) above) (collectively, the "**Severance Payment**"). Subject to Sections 5 and 10, the Severance Payment shall be paid to Executive (less applicable state and federal taxes or other payroll deductions) in monthly installments in accordance with Employer's regular payroll practices for the 12 months following the date of termination, provided that such payments shall not commence before: (i) Employer receives an executed copy of the Release (defined in Section 4.2.1) from Executive; and (ii) Executive's right to revoke the Release has lapsed under applicable law and the terms of the Release, and provided, further, that such payments shall commence in the month following the month in which Executive's Separation from Service occurs. As used herein, a "**Separation from Service**" occurs when Executive dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder. Upon Executive's termination of employment by the Company without Cause more than sixty (60) days prior to a Change of Control, subject to Section 5 and also subject to

Executive timely satisfying the conditions specified in Section 4.2.1, any unvested portion of Executive's then outstanding stock options and other equity-based awards granted by the Company that would otherwise vest during the twelve (12) months following the date of such termination shall vest in full as of the date of such termination, and, in the case of such vested stock options (including those stock options whose vesting was accelerated pursuant to the preceding clause), may be exercised in whole or in part at any time within one (1) year of the date of such termination without Cause, subject to earlier termination upon the expiration of the maximum term of the applicable options or in connection with a corporate transaction involving the Company to the extent provided in the Plan and/or the award agreements that evidence such options (collectively, the "**Accelerated Vesting and Extended Exercise Period Severance Benefit**"). In the event of such termination without Cause, all of Employer's other obligations pursuant to this Agreement except as provided in this Section 4.2 shall terminate automatically and extinguish completely following the date of such termination without Cause.

4.2.1 **Conditions to Receive Severance Payment and the Accelerated Vesting and Extended Exercise Period Severance Benefit**. The Severance Payment and the Accelerated Vesting and Extended Exercise Period Severance Benefit will be paid provided that all of the following conditions are timely met: (i) Executive complies with all surviving provisions of this Agreement as specified in Section 12.8 below; and (ii) Executive executes within 21 days following the termination of his employment (and does not revoke within any revocation period provided by applicable law) a full general release in the form attached hereto as Exhibit A, releasing all claims, known or unknown, that Executive may have against Employer and Employer's affiliates arising out of or in any way related to Executive's employment or termination of employment with Employer (the "**Release**").

4.3 **Voluntary Resignation by Executive for Good Reason More Than Sixty Days Prior to Change of Control**. If Executive notifies Employer in writing within 60 days following the initial existence of one of the circumstances constituting "Good Reason" (as defined in Section 4.3.1), Employer will be given 30 days from the receipt of such notice in which Employer may remedy or cure such condition. For purposes of the foregoing, if Executive does not timely provide notice to Employer, then Executive is deemed to have waived this right. If Employer fails to remedy or cure the condition set forth in Executive's notice within 30 days from the receipt of such notice, then provided Executive timely resigns his employment for Good Reason as provided in Section 4.3.1, Executive shall be entitled to receive the Standard Entitlements, which shall be paid to Executive within 30 days following termination or earlier if required by law. In addition, if such resignation occurs more than sixty (60) days prior to a Change of Control and so long as Executive timely complies with all of the conditions set forth in Sections 4.2.1 and 4.3.1, Executive will be entitled to receive the Severance Payment and the Accelerated Vesting and Extended Exercise Period Severance Benefit. Subject to Section 10, the Severance Payment shall be paid to Executive (less applicable state and federal taxes or other payroll deductions) in monthly installments in accordance with Employer's regular payroll practices for the 12 months immediately following the date of termination, provided that such payments shall not commence before: (i) Employer receives an executed copy of the Release from Executive; and (ii) Executive's right to revoke the Release has lapsed under applicable law and the terms of the Release, and provided, further, that such payments shall commence in the month following the month in which Executive's Separation from Service occurs. In the event of such resignation for Good Reason, all of Employer's other obligations pursuant to this Agreement except as provided in this Section 4.3 shall terminate automatically and extinguish completely following the date of such resignation for Good Reason.

4.3.1 Executive will be deemed to have resigned for "Good Reason" if Executive voluntarily terminates employment with the Company within one year after the initial occurrence of one or more of the following: (a) Employer reduces Executive's Base Salary by more than ten percent (10%), unless the reduction is made as part of, and is generally consistent with, a general reduction of other senior executive salaries; (b) Executive's authority, title, responsibilities and/or duties are materially reduced so that his duties are no longer consistent with the position of Senior Vice President and Chief Financial Officer; (c) a material breach of this Agreement by the Company; or (d) Employer relocates Executive's principal place of work to a location more than fifty (50) miles from Employer's current office location as of the Effective Date without his prior written approval.

4.4 Voluntary Resignation By Executive without Good Reason. In the event Executive's resignation is without Good Reason, Executive shall be entitled to receive the Standard Entitlements (to be paid within 30 days following such resignation or earlier as required by law), but shall not be entitled to receive (i) the Severance Payment or the Accelerated Vesting and Extended Exercise Period Severance Benefit or any portion thereof, or (ii) any further vesting of stock options; and all other obligations of Employer to Executive pursuant to this Agreement shall automatically terminate and be completely extinguished.

4.5 Termination Due to Executive's Death or Disability. Executive's employment shall terminate immediately upon Executive's death or Disability. Upon Executive's death or Disability, the Company shall pay Executive (or his estate, as applicable) within 30 days after the date of termination (or earlier to the extent required by law) the Standard Entitlements and shall allow Executive (or his estate, as applicable) to exercise any vested but unexercised portion of Executive's outstanding stock options as of the date of termination of Executive's employment within twelve (12) months after the termination of Executive's employment with the Company, subject to earlier termination upon the expiration of the maximum term of the applicable options or in connection with a corporate transaction involving the Company to the extent provided in the Plan and/or the award agreements that evidence such options. For purposes of this Agreement, "**Disability**" shall mean Executive's inability because of illness or incapacity, substantiated by appropriate medical authority selected by the Company, to render the essential functions of Executive's job as contemplated by this Agreement over a period of 180 consecutive days after taking into account any reasonable accommodations that would not cause an undue burden on the Company.

5. Effect of Change of Control.

5.1 Benefits. If a "**Change of Control**" (as defined in Section 5.2) occurs and either (x) Executive remains employed with the Company as of immediately prior to the Change of Control or (y) during the period of sixty (60) days before the Change of Control, Executive's employment with the Company is terminated by the Company without Cause or by Executive for Good Reason, then, provided Executive provides a Release in connection with the Change of Control (or, if earlier, Executive's termination of employment) and otherwise complies with the conditions set forth in Section 4.2.1, Executive shall be entitled to (a) a lump sum payment equal to one hundred fifty percent (150%) of the Executive's annual Base Salary rate then in effect, such payment to be made on the first business day after the Release becomes effective or, if later, promptly after the Change in Control and in all events no later than sixty (60) days after the Change of Control (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years), and (b) if Executive's employment is terminated by the Company without Cause or by Executive for Good Reason at any time on or after the date that is sixty (60) days before the Change of Control, a lump sum payment of the amounts (without duplication) of the amounts described in clauses (iii) and (iv) of Section 4.2, such payment to be made to Executive in a single lump sum on the first business day after the Release becomes effective (and in all events within sixty (60) days after his Separation from Service occurs), provided that if such 60-day period spans two calendar years, the payment will be made in the second of such two years. In addition, any portion of Executive's then-outstanding stock options and other equity-based awards granted by the Company that are not vested shall immediately vest on the Change in Control and, in the case of stock options and similar awards, may be exercised in whole or in part within one year following the date of Executive's termination of employment, subject to earlier termination upon the expiration of the maximum term of the applicable options or in connection with a corporate transaction involving the Company to the extent provided in the Plan and/or the award agreements that evidence such options. In the case of a termination of Executive's employment described in clause (y) above of this Section 5.1, any such stock option or other equity-based award, to the extent such award had not vested and was cancelled or otherwise terminated upon or prior to the date of the related Change of Control solely as a result of such termination of employment, shall be reinstated and shall automatically become fully vested.

5.2 **<u>Change of Control Definition</u>**. A “Change of Control” is defined to have occurred if, and only if, during the Employment Term:

(a) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Securities Exchange Act of 1934 (“**Exchange Act**”) is or becomes the “**Beneficial Owner**” (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company’s then outstanding securities entitled to vote in the election of directors of the Company;

(b) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (“**Transaction**”), in each case, with respect to which the shareholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than fifty (50) percent of the combined voting power of the Company or other corporation resulting from such Transaction; or

(c) there occurs a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company’s revenue for the immediately preceding four (4) fiscal quarters.

5.3 **<u>No Duplication of Benefits</u>**. For avoidance of doubt, if a Change of Control occurs and Executive is entitled to the benefits provided in this Section 5 above, Executive will not be entitled to any severance payments or benefits (other than the Standard Entitlements) under Section 4 of this Agreement. To the extent Executive has received any severance benefits under Section 4 of this Agreement with respect to a termination of Executive’s employment that occurs prior to a Change of Control, Executive’s benefits (if any) pursuant to this Section 5 shall be reduced on a dollar-for-dollar basis by the amount of any such severance benefits paid to Executive pursuant to Section 4 (provided that such offset shall not apply with respect to Executive’s Standard Entitlements paid in connection with such termination of Executive’s employment). In addition, only the first Change of Control that occurs after the date of this Agreement will be taken into account for purposes of this Agreement, and any Change of Control that may occur thereafter will be disregarded.

6. **<u>Confidentiality/Intellectual Property Agreement And Insider Trading Policy</u>**. Executive agrees that he has read, signed, and will abide by the terms and conditions of Employer’s Confidentiality/Intellectual Property Agreement and Employer’s Insider Trading Policy.

Executive recognizes that his employment with the Company will involve contact with information of substantial value to the Company which gives the Company an advantage over its competitors who do not know or use it, including but not limited to, techniques, designs, drawings, processes, inventions, developments, equipment, prototypes, sales and customer information, and business and financial information relating to the business, products, practices and techniques of the Company (hereinafter referred to as “**Confidential and Proprietary Information**”). Executive will at all times regard and preserve as confidential such Confidential and Proprietary Information obtained by Executive from whatever source and will not, either during his employment with the Company or thereafter, publish or disclose any part of such Confidential and Proprietary Information in any manner at any time, or use the same except on behalf of the Company, without the prior written consent of the Company.

7. **<u>Non-Competition</u>.** Except with the prior written consent of Employer, Executive will not, during the Employment Term, engage in competition with Employer, either directly or indirectly, in any manner or capacity, as adviser, principal, agent, partner, officer, director, employee, member of any association or otherwise, in any phase of the business of developing, manufacturing and marketing of products which are in the same field of use or which otherwise compete with the product or products actively under development by Employer. Except as permitted herein, Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by Executive to be adverse or antagonistic to Employer, its business or prospects, financial or otherwise. Ownership by Executive, as a passive investment, of less than one percent (1%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or publicly traded in the over-the-counter market shall not constitute a breach of this Section 7.

8. Non-Solicitation. During the Employment Term and for a period of one year thereafter, irrespective of the manner of termination of employment, Executive agrees not to, directly or indirectly, separately, or in association with others: (a) interfere with, impair, disrupt, or damage Employer's relationship with any of its customers by soliciting, encouraging, or causing others to solicit or encourage any of them, for the purpose of diverting or taking away the business such customers have with Employer; or (b) interfere with, impair, disrupt, or damage Employer's business by soliciting, encouraging, or causing others to solicit or encourage, any of Employer's employees to discontinue their employment with Employer.

9. Agreement To Arbitrate. Executive and Employer agree to arbitrate any claim or dispute ("**Dispute**") arising out of or in any way related to this Agreement, the employment relationship between Employer and Executive or the termination of Executive's employment, except as provided in Section 9.1, to the fullest extent permitted by law. Except as provided in Section 9.1, this method of resolving Disputes shall be the sole and exclusive remedy of the parties. Accordingly, the parties understand that, except as provided herein, they are giving up their rights to have their disputes decided in a court of law and, if applicable, by a jury, and instead agree that their disputes shall be decided by an arbitrator.

9.1 Scope of the Agreement. A Dispute shall include all disputes or claims between Executive and Employer arising out of, concerning or relating to Executive's employment by Employer, including, without limitation: claims for breach of contract, tort, discrimination, harassment, wrongful termination, demotion, discipline, failure to accommodate, compensation or benefits claims, constitutional claims and claims for violation of any local, state or federal law, or common law, to the fullest extent permitted by law. A Dispute shall not include any dispute or claim, whether brought by either Executive or Employer, for: (a) workers' compensation or unemployment insurance benefits; or (b) the exclusions from arbitration specified in the California Arbitration Act, California Code of Civil Procedure section 1281.8. For the purpose of this Section 9, references to "**Employer**" include Employer and all related or affiliated entities and their employees, supervisors, officers, directors, owners, shareholders, agents, pension or benefit plans, pension or benefit plan sponsors, fiduciaries, administrators, and the successors and assigns of any of them, and this Section 9 shall apply to them to the extent that Executive's claims arise out of or relate to their actions on behalf of Employer.

9.2 Consideration. The parties agree that their mutual promise to arbitrate any and all disputes between them, except as provided in Section 9.1, rather than litigate them before the courts or other bodies, provides adequate consideration for this Section 9.

9.3 Initiation of Arbitration. Either party may initiate an arbitration proceeding by providing the other party with written notice of any and all claims forming the basis of such proceeding in sufficient detail to inform the other party of the substance of such claims. In no event shall the request for arbitration be made after the date when institution of legal or equitable proceedings based on such claims would be barred by the applicable statute of limitations.

9.4 Arbitration Procedure. The arbitration will be conducted by JAMS pursuant to its Rules for the Resolution of Employment Disputes in San Diego, California by a single, neutral arbitrator. The parties are entitled to representation by an attorney or other representative of their choosing. The arbitrator shall have the power to enter any award that could be entered by a judge of the Superior Court of the State of California, as applicable to the cause of action, and only such power. The arbitrator shall issue a written and signed statement of the basis of the arbitrator's decision, including findings of fact and conclusions of law. The parties agree to abide by and perform any award rendered by the arbitrator. Judgment on the award may be entered in any court having jurisdiction thereof.

9.5 **Costs of Arbitration**. If Executive initiates arbitration against the Employer, Executive must pay a filing fee equal to the current filing fee in the appropriate court had Executive's claim been brought there, and the Employer shall bear the remaining costs of the filing fees and arbitration forum, including arbitrator fees, case management fees, and forum hearing fees (the "**Arbitration Fees**"). If the Employer initiates arbitration against Executive, the Employer shall bear the entire cost of the Arbitration Fees. (Such costs do not include costs of attorneys, discovery, expert witnesses, or other costs which Executive would have been required to bear had the matter been filed in a court.) The arbitrator may award attorneys' fees and costs to the prevailing party, except that Executive shall have no obligation to pay any of the Arbitration Fees even if Employer is deemed the prevailing party. If there is any dispute as to whether the Employer or Executive is the prevailing party, the arbitrator will decide that issue. Any postponement or cancellation fee imposed by the arbitration service will be paid by the party requesting the postponement or cancellation, unless the arbitrator determines that such fee would cause undue hardship on the party. At the conclusion of the arbitration, each party agrees to promptly pay any arbitration award imposed against that party.

9.6 **Governing Law**. All Disputes between the parties shall be governed, determined and resolved by the internal laws of the State of California, including the California Arbitration Act, California Code of Civil Procedure 1280 et seq.

9.7 **Discovery**. The parties may obtain discovery in aid of the arbitration to the fullest extent permitted under law, including California Code of Civil Procedure Section 1283.05. All discovery disputes shall be resolved by the arbitrator.

10. **Code Section 409A**. Notwithstanding anything to the contrary, if, at the time of his separation of service from Employer, Executive is a "specified employee" as defined pursuant to Section 409A of the U.S. Internal Revenue Code (the "**Code**"), and if the amounts that Executive is entitled to receive pursuant to this Agreement are not otherwise exempt from Code Section 409A, then to the extent necessary to comply with Code Section 409A, no payments for such non-exempt amounts may be made under this Agreement before the date which is six (6) months after Executive's separation from service from Employer or, if earlier, Executive's date of death. All such amounts, which would have otherwise been required to be paid during such six (6) months after Executive's separation from service shall instead be paid (without interest) to Executive in one lump sum payment on the first business day of the seventh month after Executive's separation from service from Employer or, if earlier, Executive's date of death. All such remaining payments shall be made pursuant to their original terms and conditions. This Agreement is intended to comply with the applicable requirements of Code Section 409A and shall be construed and interpreted in accordance therewith. Employer may at any time amend this Agreement, or any payments to be made hereunder, as necessary to be in compliance with Code Section 409A and avoid the imposition on Executive of any potential excise taxes relating to Code Section 409A. Any reimbursements pursuant to the foregoing provisions of this Agreement shall be paid as soon as reasonably practicable and in all events not later than the end of Executive's taxable year following the taxable year in which the related expense was incurred. Executive's rights to reimbursement hereunder are not subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement in one taxable year shall not affect the amount of expenses eligible for reimbursement in any other taxable year.

11. Limitation on Payments. In the event that it is determined that any payment or distribution of any type to or for Executive's benefit made by the Company, by any of its affiliates, by any person who acquires ownership or effective control or ownership of a substantial portion of the Company's assets (within the meaning of Section 280G of the Code and the regulations thereunder) or by any affiliate of such person, whether paid or payable or distributed or distributable pursuant to the terms of an employment agreement or otherwise, would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties with respect to such excise tax (such excise tax, together with any such interest or penalties, are collectively referred to as the "**Excise Tax**"), then such payments or distributions or benefits shall be payable either:

(i) in full; or

(ii) in a reduced amount with such reduced amount equal to the maximum amount payable that would result in no portion of such reduced payments or distributions or benefits being subject to the Excise Tax.

Executive shall receive the greater, on an after-tax basis, of (i) or (ii) above.

Unless Executive and the Company agree otherwise in writing, any determination required under this section shall be made in writing by an independent accountant (which may be the Company's audit firm) selected by the Company (the "**Accountant**") whose determination shall be conclusive and binding. Executive and the Company shall furnish the Accountant such documentation and documents as the Accountant may reasonably request in order to make a determination. The Company shall bear all costs that the Accountant may reasonably incur in connection with performing any calculations contemplated by this section.

12. General Provisions.

12.1 Successors And Assigns. The rights and obligations of Employer under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Employer. Executive shall not be entitled to assign any of Executive's rights or obligations under this Agreement.

12.2 Indemnification. The indemnification provisions for officers and directors under Employer's Bylaws will (to the maximum extent permitted by law) be extended to Executive. During the period of Executive's employment by the Company and for a period of six years thereafter, the Company shall keep in place a directors' and officers' liability insurance policy (or policies) providing comprehensive coverage to Executive to the extent that the Company provides such coverage for any other present or former senior executive or director of the Company.

12.3 Waiver. Except as provided in Section 2.4, this Agreement may not be modified or amended except by an instrument in writing, signed by Executive and by a duly authorized representative of Employer other than Executive. Either party's failure to enforce any provision of this Agreement shall not in any way be construed as an amendment or waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Agreement.

12.4 Severability. If any provision of this Agreement is held by an arbitrator or a court of law to be illegal, invalid or unenforceable, then: (a) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision; and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

12.5 Interpretation; Construction. This Agreement has been drafted by Employer, but Executive has participated in the negotiation of its terms. Furthermore, Executive acknowledges that he has had an opportunity to review and revise the Agreement and have it reviewed by legal counsel, if desired. Therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

12.6 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.

12.7 Notices. All notices or demands of any kind required or permitted to be given by the Company or Executive under this Agreement shall be given in writing and shall be personally delivered (and receipted for) or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

IF TO THE COMPANY: IF TO EXECUTIVE:
Sphere 3D Corp. Kurt Kalbfleisch
240 Matheson Blvd. East (At the address most recently
Mississauga, Ontario, Canada L4Z 1X1 provided to the Company)
Attn: Chief Executive Officer

Any such written notice shall be deemed received when personally delivered or three (3) days after its deposit in the United States mail as specified above. Either party may change its address for notices by giving notice to the other party in the manner specified in this Section 11.7.

12.8 Survival. The rights and obligations contained in Section 8 (“**Non-Solicitation**”) shall survive any termination or expiration of this Agreement for a period of one (1) year, and Sections 4 (“**Termination**”), 6 (“**Confidentiality/Intellectual Property Agreement and Insider Trading Policy**”), 9 (“**Agreement to Arbitrate**”), 10 (“**Code Section 409A**”) and 11 (“**General Provisions**”) shall survive any termination or expiration of this Agreement.

12.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the subject matter herein and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral (including, without limitation, the Prior Agreement).

12.10 Counterparts. This Agreement may be executed in one or more original, facsimile or .PDF counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.11 Recovery of Attorney’s Fees and Expenses. If any litigation shall occur between Executive and Employer which arises out of or as a result of this Agreement, or which seeks an interpretation of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs.

12.12 Tax Consequences. The Company makes no representations regarding the tax consequence of any provision of this Agreement. Executive is advised to consult with his own tax advisor with respect to the tax treatment of any payment contained in this Agreement. All payments made by the Company under this Agreement to Executive or Executive’s estate or beneficiaries will be subject to tax withholding pursuant to any applicable laws or regulations.

THE PARTIES TO THIS AGREEMENT HAVE READ THE FOREGOING AGREEMENT IN ITS ENTIRETY AND FULLY UNDERSTAND EACH AND EVERY PROVISION CONTAINED HEREIN, WHEREFORE, THE PARTIES HAVE FREELY AND VOLUNTARILY EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

Executive:

Kurt L. Kalbfleisch
Vice President and Chief Financial Officer

Company:

SPHERE 3D CORP.

/s/ Eric Kelly___________
Eric Kelly
Chief Executive Officer

EXHIBIT A

GENERAL RELEASE

THIS GENERAL RELEASE ("**Release**") is entered into effective as of the date set forth below by and between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario (the "**Company**") and Kurt L. Kalbfleisch, an individual ("**Employee**"), with reference to the following facts:

RECITALS

A. The parties entered into an Amended and Restated Employment and Severance Agreement (the "**Agreement**") effective as of December 18, 2017, pursuant to which the parties agreed that upon the occurrence of certain conditions, Employee would become eligible for certain payments and benefits as provided in Section 4 or Section 5 of the Agreement in exchange for Employee's release of the Company from all claims which Employee may have against the Company as of the date of this Release. All capitalized terms that are not defined herein shall have the meaning set forth in the Agreement.

B. The parties desire to dispose of, fully and completely, all claims which Employee may have against the Company in the manner set forth in this Release.

RELEASES

1. Consideration. The Employer shall provide Employee with certain payments and benefits in accordance with the applicable provisions of Sections 4 and 5 of the Agreement.

2. Release by Employee. Employee, for himself and his heirs, successors and assigns, fully releases and discharges the Company, its officers, directors, employees, shareholders, attorneys, accountants, other professionals, insurers and agents (collectively, "**Agents**"), and all entities related to each party, including, but not limited to, heirs, executors, administrators, personal representatives, assigns, parent, subsidiary and sister corporations, affiliates, partners and co venturers (collectively, "**Related Entities**"), from all rights, claims, demands, actions, causes of action, liabilities and obligations of every kind, nature and description whatsoever, Employee now has, owns or holds or has at anytime had, owned or held or may have against the Company, Agents or Related Entities from any source whatsoever, whether or not arising from or related to the facts recited in this Release. Employee specifically releases and waives any and all claims arising under any express or implied contract, rule, regulation or ordinance, including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Labor Code and the Age Discrimination in Employment Act, as amended ("**ADEA**"). Employee acknowledges that the Company has paid Employee all wages, bonuses, accrued unused vacation pay, options, benefits and monies owed by the Company to Employee. This release does not waive any claims for (a) indemnification and/or payment of related expenses under (i) any applicable law and/or (ii) the Company's by laws or articles of incorporation; (b) Employee's ownership of any Company vested stock, vested stock units or vested stock options, and/or Employee's rights as an existing shareholder of the Company; (c) any rights Employee has under any applicable stock option plan of the Company and/or any vested stock option, stock unit, stock purchase or other shareholder agreements with Company; (d) any vested rights or claims Employee may have under any Company-sponsored benefit plans (including, without limitation, any medical, dental, disability, life insurance or retirement plans); (e) any rights Employee may have to obtain continued health insurance coverage or other benefits pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**"), and/or any similar state law; (f) any claims Employee may have against the Company for reimbursement of business or other expenses incurred in connection with Employee's employment with Company; (g) any other claims which as a matter of law cannot be waived; or (h) any obligation of the Company to Employee pursuant to Sections 4 or 5 of the Agreement. Notwithstanding anything to the contrary herein, nothing in this Release prohibits Employee from filing a charge with or participating in an investigation conducted by any state or federal government agencies. However, Employee does waive, to the maximum extent permitted by law, the right to receive

any monetary or other recovery, should any agency or any other person pursue any claims on Employee's behalf arising out of any claim released pursuant to this Release. For clarity, and as required by law, such waiver does not prevent Employee from accepting a whistleblower award from the Securities and Exchange Commission pursuant to Section 21F of the Securities Exchange Act of 1934, as amended. Employee acknowledges and agrees that he has received any and all leave and other benefits that he has been and is entitled to pursuant to the Family and Medical Leave Act of 1993. Employee represents and warrants to the Company that he has not heretofore assigned or transferred to any person not a party to this Release any released matter or any part or portion thereof.

3. Section 1542 Waiver. This Release is intended as a full and complete release and discharge of any and all claims that Employee may have against the Company, Agents or Related Entities. In making this release, Employee intends to release each of the Company, Agents and Related Entities from liability of any nature whatsoever for any claim of damages or injury or for equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown to him. Employee expressly waives all rights under Section 1542 of the California Civil Code, which Employee understands provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee acknowledges that he may discover facts different from or in addition to those that he now believes to be true with respect to this Release. Employee agrees that this Release shall remain effective notwithstanding the discovery of any different or additional facts.

4. ADEA Waiver. Employee expressly acknowledges and agrees that by entering into this Release, he is waiving any and all rights or claims that he may have arising under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), and that this waiver and release is knowing and voluntary. Employee and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the date Employee signs this Release. Employee further expressly acknowledges and agrees that:

(a) In return for this Release, he will receive consideration beyond that which he was already entitled to receive before executing this Release;

(b) He is hereby advised in writing by this Release to consult with an attorney before signing this Release;

(c) He was given a copy of this Release on [__________, 2017], and informed that he had **[**twenty-one (21)**]** days within which to consider this Release and that if he wished to execute this Release prior to the expiration of such **[**21**]**-day period he will have done so voluntarily and with full knowledge that he is waiving his right to have **[**twenty-one (21)**]** days to consider this Release; and that such **[**twenty-one (21)**]** day period to consider this Release would not and will not be re-started or extended based on any changes, whether material or immaterial, that are or were made to this Release in such **[**twenty-one (21)**]** day period after he received it;

(d) He was informed that he had seven (7) days following the date of execution of this Release in which to revoke this Release, and this Release will become null and void if Employee elects revocation during that time. Any revocation must be in writing and must be received by the Company during the seven-day revocation period. In the event that Employee exercises this revocation right, neither the Company nor Employee will have any obligation under this Release. Any notice of revocation should be sent by Employee in writing to the Company (attention [______________]), [Address], so that it is received within the seven-day period following execution of this Release by Employee.

(e) Nothing in this Release prevents or precludes Employee from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law.

5. No Undue Influence. This Release is executed voluntarily and without any duress or undue influence. Employee acknowledges that he has read this Release and executed it with his full and free consent. No provision of this Release shall be construed against any party by virtue of the fact that such party or its counsel drafted such provision or the entirety of this Release.

6. Governing Law. This Release is made and entered into in the State of California and accordingly the rights and obligations of the parties hereunder shall in all respects be construed, interpreted, enforced and governed in accordance with the laws of the State of California as applied to contracts entered into by and between residents of California to be wholly performed within California.

7. Severability. If any provision of this Release is held to be invalid, void or unenforceable, the balance of the provisions of this Release shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired or invalidated.

8. Counterparts. This Release may be executed simultaneously in one or more original, facsimile, or .PDF counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Release may be executed by facsimile, with originals to follow by overnight courier.

9. Dispute Resolution Procedures. Any dispute or claim arising out of this Release shall be subject to final and binding arbitration in accordance with the procedures, terms and conditions set forth Section 9 of the Agreement, which terms are incorporated herein by reference.

10. Entire Agreement. This Release constitutes the entire agreement of the parties with respect to the subject matter of this Release, and supersedes all prior and contemporaneous negotiations, agreements and understandings between the parties, oral or written; provided, however, that this Release shall not terminate the Company’s obligations under Section 4, 5, 9, 12.2 and 12.11 of the Agreement.

11. Modification; Waivers. No modification, termination or attempted waiver of this Release will be valid unless in writing, signed by the party against whom such modification, termination or waiver is sought to be enforced.

12. Amendment. This Release may be amended or supplemented only by a writing signed by Employee and the Company.

Date: ___________
Kurt L. Kalbfleisch

SPHERE 3D CORP.

Date: By: ___________
Name: Eric Kelly
Title: Chief Executive Officer

Exhibit 10.50

September 24, 2015

OFFER OF EMPLOYMENT

Jenny C. Yeh
686 Lola Lane
Mountain View CA 94040

Dear Jenny:

Sphere3D, (the "Company") would like to extend the following offer of employment:

Position: Vice President & General Counsel
Location: San Jose Office, 125 S. Market Street, San Jose, CA 95113

Reports to: Eric Kelly, Chairman & Chief Executive Officer

Compensation: Bi-Weekly: $11,538.46 (Annual $300,000) paid in accordance with our normal payroll practices and subject to normal withholding.

Bonus: You will be eligible to participate in the executive incentive plan. The incentive plan will be based on corporate and individual goals to be established by the CEO with a target compensation of 20% of your annual base compensation. Total compensation package could equal $360,000.

Stock Options: Subject to the approval of the Sphere 3D Board of Directors you will be granted restricted stock units of 200,000 shares of Sphere 3D Common Stock. The restricted stock units will vest in six substantially equal semi-annual installments over the three years following the first date of your employment.

Additionally, the recommended RSU's will contain language that will provide that after six months of your employment, if your employment with Sphere3D is terminated by you for Good Reason or by the Company without Cause (as defined below) during the two year period following a Change of Control (as defined below), then any unvested portion of the equity-based awards granted by the Company to you shall vest in full as of the date of such termination. If the unvested portion of the equity is not assumed by the acquirer in connection with a Change of Control or otherwise settled in cash or other property in connection with such Change of Control, then you're unvested portion of the equity not so assumed or settled will accelerate and become fully vested and exercisable immediately prior to the closing of such Change of Control.

(a) a “**Change of Control**” will be defined to have occurred if, and only if, during the term of your employment with Overland:

(i) any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or person, or any syndicate or group deemed to be a person under Section 14(d)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) is or becomes the “Beneficial Owner” (as defined in Rule 13d-3 of the General Rules and Regulations under the Exchange Act), directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company’s then outstanding securities entitled to vote in the election of directors of the Company (other than as a result of a purchase of shares directly from the Company in a capital-raising transaction);

(ii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (“Transaction”), in each case, with respect to which the shareholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than fifty percent (50%) of the combined voting power of the Company or other corporation resulting from such Transaction; or

(iii) all or substantially all of the assets of the Company are sold, liquidated or distributed;

For purposes of the foregoing, the term “Cause” shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part with respect to your obligations or otherwise relating to the business of the Company that causes material harm to the Company or its reputation; (b) your material breach of any agreement between you and the Company, which breach you fail to cure within 30 days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) your conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) your willful neglect of duties as reasonably determined by the Company, which you fail to cure within 30 days after receiving written notice from the Company that specifies the specific duties that you have failed to perform.

For purposes of this Agreement, “Good Reason” shall mean a voluntary termination by you of your employment with the Company within 90 days after the initial occurrence of one or more of the following: (a) your authority, responsibilities and/or duties are materially reduced so that your duties are no longer consistent with your position as of the date of grant; or (b) the Company relocates your principal place of work to a location more than fifty (50) miles from the Company’s current office location as of the date of grant without your prior written approval; provided, however, that such a termination by you shall not be a termination for Good Reason unless you notify the Company in writing within 60 days following the initial existence of one of the circumstances constituting “Good Reason”, the Company is given 30 days from the receipt of such notice in which the Company may remedy or cure such condition, and the Company fails to remedy or cure the condition set forth in your notice within 30 days of receipt of such notice. For purposes of the foregoing, if you do not timely provide notice to the Company, then you are deemed to have waived this right.

At Sphere3D we strive to maintain a safe, drug-free work environment conducive to effective business operations. We require that our personnel and operating practices be consistent with the highest standards of health and safety.

Sphere3D pays 100% of your benefits and they will be effective on the 1st day of the month following your start date. Sphere3D is committed to making available excellent benefit programs and family services that respond to the needs of our employees. We believe we offer a flexible and competitive package. You will meet with our Human Resources Department upon your arrival so that they can explain your new benefits and sign you up for coverage.

The Immigration Reform and Control Act of 1986 require employers to provide verification of a new employee's identity and employment eligibility on their first day of employment. It is
necessary, therefore, that you complete the US Government and Employment Eligibility Verification Form (I-9) and provide documentation to verify your identity and employment eligibility. In order to begin your employment with us, and as part of our normal process, please bring your I-9 documents with you on your first day of work.

Your employment with Sphere3D will be "at-will". This means that it is not for any specified period of time and can be terminated by you or by Sphere3D at any time, with or without advance notice, and for any or no particular reason or cause. It also means that your job duties, title, responsibilities, reporting level, compensation and benefits, as well as Sphere3D's personnel policies and procedures may be changed with or without notices at any time in the sole discretion of Sphere3D, subject to benefits you may be entitled to under the Severance agreement referenced above. The "at-will" nature of your employment will remain unchanged during your tenure as an employee and may be changed only by an express written agreement that is signed by you and the Chief Executive Officer.

In order to document your acceptance, please **sign and return this document no later than close of business October 5, 2015**via fax (408) 904-7241. By signing this document you hereby agree and acknowledge that you continue to be bound the terms and conditions of any agreement made by and between you and your former employer(s) regarding the nondisclosure of confidential and proprietary information. Please feel free to contact Carol Dixon, Vice President, Human Resources, at (408) 283-4760 with any additional questions.

Very truly yours,

/s/ Eric Kelly
Eric Kelly Date: October 4, 2015
Chairman & CEO

By signing, I understand, acknowledge and agree to the terms of this offer.

Acceptance:

/s/ Jenny Yeh 10/5/15
Jenny C. Yeh Date

My expected start date is on or before: ______________________________

Exhibit 10.51

[Company letterhead]

December 18, 2017

Jenny Yeh
Sphere 3D Corp.
125 S. Market St., Suite 1300
San Jose, CA 95113

Re: **<u>Retention Agreement</u>**

Dear Jenny:

I am pleased to inform you that the Board of Directors of Sphere 3D Corp. (the "**Company**") has approved a new retention arrangement for you, effective as of the date set forth above, to receive the benefits described below if either a Change in Control Event occurs or if your employment is terminated by the Company without Cause or by you for Good Reason prior to a Change in Control Event. (Capitalized terms have the meanings given in <u>Exhibit A</u> to this letter if not otherwise defined herein.). The retention benefits are subject to the terms and conditions set forth in this letter agreement (this "**Agreement**"). This Agreement supersedes and replaces in its entirety your severance letter agreement with the Company dated November 10, 2017 (the "**Prior Agreement**").

1. <u>Change in Control Event</u>. If a Change in Control Event occurs and you remain employed with the Company or any of its subsidiaries as of immediately prior to the Change in Control Event, you will be entitled to receive (a) an amount equal to twelve (12) times your monthly rate of base salary as in effect on the date of the Change in Control Event, such amount to be paid in a lump sum on the first business day after the Release becomes effective and in all events within sixty (60) days after the Change in Control Event occurs (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years) (the "**Retention Bonus**"); (b) your equity-based awards granted by the Company, to the extent then outstanding and unvested, will accelerate and fully vest (and, in the case of options and similar awards, be fully exercisable) upon (or immediately prior to) the Change in Control Event (the "**Equity Acceleration**"); and (c) upon a termination of your employment with the Company (or one of its successors or affiliates) on or after the Change in Control Event either by the Company or such successor or affiliate without Cause or by you for Good Reason, you will be entitled to a cash lump sum payment equal to the non-discounted present value of your expected premiums charged to continue health coverage for you (and, if applicable, your eligible dependents) pursuant to the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**") for twelve (12) months following your termination date (the "**COBRA Benefit**"), such amount to be determined by the Company in its reasonable discretion based on your coverage elections as in effect immediately prior to your termination of employment and the estimated monthly premium for such COBRA coverage determined as of your termination date, such amount to be paid within sixty (60) days following your termination date (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years).

2. <u>Termination Without Cause or for Good Reason Prior to Change in Control Event</u>. If, at any time prior to a Change in Control Event, your employment with the Company or one of its subsidiaries is terminated by the Company or such subsidiary without Cause or by you for Good Reason, you will be entitled to receive payment of the Retention Bonus and the COBRA Benefit as set forth above (calculated based on your monthly base salary rate and health coverage benefits, respectively, as in effect immediately prior to your termination), such amounts to be paid together within sixty (60) days following your termination date (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years). In addition, you will be entitled to the Equity Acceleration provided above with respect to your equity-based awards granted by the Company that are outstanding and unvested as of such a termination of your employment.

3. Conditions on Benefits. Notwithstanding the foregoing provisions, your right to receive any of the payments and benefits described in Sections 1 and 2 above is conditioned on both (i) your signing and delivering to the Company a release of claims in a form acceptable to the Company (the "**Release**") within twenty-one (21) days (or such longer period of time as is required to make the Release maximally enforceable under applicable law) after the date on which the Company provides the Release to you (and you not revoking such Release within any revocation period provided by applicable law), and (ii) your continued compliance with your obligations to the Company under the Confidentiality and Intellectual Property Agreement dated October 5, 2015 (the "**Confidentiality Agreement**"). The Company will provide the form of Release to you within seven (7) days after your termination date.

4. Other Terminations; No Duplication of Benefits. For purposes of clarity, if your employment with the Company or any of its subsidiaries terminates prior to a Change in Control Event for any reason other than a termination by the Company or such subsidiary without Cause or by you for Good Reason, you will not be entitled to any payments or benefits under this Agreement. In no event will you be entitled to benefits under both Sections 1 and 2 of this Agreement. In addition, only the first Change of Control Event that occurs after the date of this Agreement will be taken into account for purposes of this Agreement, and any Change of Control Event that may occur thereafter will be disregarded.

5. Miscellaneous. Each of the payments provided in this Agreement is subject to all applicable tax withholding. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, reorganization or otherwise, including a Change in Control Event) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent the Company would be required to perform if no such succession had taken place. This Agreement will be binding upon and inure to the benefit of the Company and any such successor to the Company and will inure to the benefit of and be enforceable by your successors. Nothing contained in this Agreement constitutes an employment or service commitment by the Company (or any of its affiliates or successors) or affects your status as an employee at will who is subject to termination without cause at any time (subject to the provisions hereof). This Agreement, together with the Confidentiality Agreement, contains all of the terms and conditions of the retention benefits provided herein and supersedes all prior understandings and agreements, written or oral, between you and the Company and any of its affiliates with respect thereto (including, without limitation, the Prior Agreement). This Agreement may be amended only by a written agreement between you and the Company that expressly refers to this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without regard to the conflicts of laws principles thereof. It is intended that any amounts payable under this Agreement shall either be exempt from or comply with Section 409A of the U.S. Internal Revenue Code so as not to subject you to payment of any additional tax, penalty or interest imposed under Section 409A, and the provisions of this Agreement will be construed and interpreted in accordance with such intent.

If this Agreement accurately reflects our understanding regarding these matters, please indicate your acceptance by where indicated below and returning it to me. A duplicate copy of this Agreement is included for your records.

SPHERE 3D CORP.

By: /s/ Eric L. Kelly____

Print Name: Eric L. Kelly

Title: Chairman and CEO

Acknowledged and Agreed:

____

Jenny Yeh

Date: ____________

EXHIBIT A

For purposes of this Agreement, the following definitions will apply:

- "**Cause**" has the meaning given to such term in any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part with respect to your obligations or otherwise relating to the business of the Company or any of its subsidiaries that causes material harm to the Company or such subsidiary or to the reputation of the Company or such subsidiary; (b) your material breach of any agreement between you and the Company or one of its subsidiaries, which breach you fail to cure within thirty (30) days after receiving written notice from the Company's Board of Directors (the "**Board**") that specifies the specific conduct giving rise to the alleged breach; (c) your conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) your willful neglect of duties as reasonably determined by the Board, which you fail to cure within thirty (30) days after receiving written notice from the Board that specifies the specific duties that you have failed to perform.

- "**Change in Control Event**" means the occurrence of any of the following:

  (a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (such individual, entity or group, a "**Person**") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Company (the "**Outstanding Company Common Shares**") or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that, for purposes of this clause (a), any acquisition by any entity pursuant to a transaction that complies with all of clauses (b)(1), (2) and (3) below shall not constitute a Change in Control Event;

  (b) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) full fiscal quarters as reflected in the Company's financial statements, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a "**Business Combination**"), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) fiscal quarters as reflected in the Company's financial statements, either directly or through one or more subsidiaries (a "**Parent**")) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the

then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(c) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a transaction that does not constitute a Change in Control Event under clause (b) above.

- “**Good Reason**” has the meaning given to such term in any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the occurrence (without your consent) of any one or more of the following conditions: (a) a reduction in your rate of base salary or your target annual bonus opportunity by more than ten percent (10%) from the level in effect immediately prior to the Change in Control Event; (b) a material reduction in your authorities, duties or responsibilities from the level in effect immediately prior to the Change in Control Event; (c) a change in the geographic location of your principal office with the Company (or any subsidiary or affiliate thereof or successor thereto) by more than fifty (50) miles from the location as of the Change in Control Event; or (d) any action or inaction by the Company (or any subsidiary or affiliate thereof or successor thereto) that constitutes a material breach of the provisions of this Agreement; provided, however, that any such condition or conditions, as applicable, shall not constitute Good Reason unless (x) you provide written notice to the Company of the condition claimed to constitute Good Reason within thirty (30) days of the initial existence of such condition(s), (y) the Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof, and (z) your employment with the Company terminates within ninety (90) days following the initial existence of the condition claimed to constitute Good Reason.

Exhibit 10.52

[Company letterhead]

__________, 2017

____
____
____

Re: **Stay Bonus Opportunity**

Dear __________:

I am pleased to inform you that the board of directors of Sphere 3D Corp. (the "**Company**") has approved an opportunity for you to receive a cash bonus in connection with a sale of the Company on the terms set forth in this letter (the "**Stay Bonus**"). This Stay Bonus opportunity is in addition to any severance or other bonus opportunity you may be entitled to receive under your existing employment or retention agreements with the Company, or award agreements under any change in control plan or similar plan, in effect on the date hereof or entered into concurrently herewith, as the same may be amended from time to time (collectively, the "**Other Payments**"). Capitalized terms have the meanings given in Exhibit A to this letter if not otherwise defined herein.

If a Change in Control Event occurs and provided that you satisfy the requirement to provide a Release to the Company in accordance with the following paragraph, you will be eligible to receive a Stay Bonus in the amount of **[$_______]**, subject to the terms and conditions set forth in this letter agreement. Provided that you remain employed with the Company or any of its subsidiaries as of immediately prior to the Change in Control Event (the "**Closing**"), you will be entitled to receive a cash payment equal to fifty percent (50%) of the Stay Bonus amount. In addition, provided that you remain employed with the Company or any of its subsidiaries through the date that is three (3) months after the date of the Closing (the "**Retention Date**"), you will be entitled to receive a cash payment equal to the remaining fifty percent (50%) of the Stay Bonus amount. Notwithstanding the foregoing, in the event that your employment with the Company is terminated either by the Company without Cause or by you for Good Reason at any time after the date hereof and prior to the time the full amount of the Stay Bonus has been paid to you (whether or not a Change in Control Event has occurred as of the date of such termination) and provided that you satisfy the requirement to provide a Release to the Company in accordance with the following paragraph, you will be entitled to receive payment of any portion of the Stay Bonus amount that has not previously been paid to you. If you become entitled to receive any payment of the Stay Bonus hereunder, such payment will be made as soon as practicable after (and in all events within sixty (60) days after) the date of the Closing or the Retention Date, as applicable (or, if payment of the Stay Bonus is triggered by your termination of employment, the date of such termination), provided that if the period for you to consider and not revoke the Release spans two calendar years, such payment will be made in the second of such two years.

Your right to receive any payment of the Stay Bonus pursuant to the preceding paragraph is conditioned on both (i) you signing and delivering a Release to the Company within twenty-one (21) days (or such longer period of time as is required to make the release maximally enforceable under applicable law) after the date on which the Company provides the Release to you (and you not revoking such Release within any revocation period provided by applicable law), and (ii) your continued compliance with your obligations to the Company under the Confidentiality and Intellectual Property Agreement dated **[______________]**. The Company will provide the form of release to you within seven (7) days after your termination date.

Any Stay Bonus payable hereunder shall be subject to all applicable withholdings and other authorized deductions. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, reorganization or otherwise, including a Change in Control Event) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent the Company would be required to perform if no such succession had taken place. This Agreement will be binding upon and inure to the benefit of the Company and any such successor to the Company and will inure to the benefit of and be enforceable by your successors. Nothing contained in this letter constitutes an employment or service commitment by the Company (or any of its affiliates or successors) or affects your status as an employee at will who is subject to termination without cause at any time (subject to the provisions hereof). This letter contains all of the terms and conditions of your Stay Bonus opportunity and supersedes all prior understandings and agreements, written or oral, between you and the Company with respect to a bonus opportunity in connection with a Change in Control Event or similar event (provided that, as noted above, this Stay Bonus opportunity is in addition to any Other Payments). This letter may be amended only by a written agreement, signed by an authorized officer of the Company, that expressly refers to this letter. The validity, interpretation, construction and performance of this letter shall be governed by the laws of the State of California without regard to the conflicts of laws principles thereof.

If this letter accurately reflects our understanding regarding these matters, please indicate your acceptance by signing this letter below and returning it to me. A duplicate copy of this letter is included for your records.

Sphere 3D Corp.

By: ____________

Print Name: ___________

Title: _____________

Acknowledged and Agreed:

____

[Name]

Date: ___________

EXHIBIT A

For purposes of this Agreement, the following definitions will apply:

- "**Cause**" has the meaning given to such term in any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part with respect to your obligations or otherwise relating to the business of the Company or any of its subsidiaries that causes material harm to the Company or such subsidiary or to the reputation of the Company or such subsidiary; (b) your material breach of any agreement between you and the Company or one of its subsidiaries, which breach you fail to cure within thirty (30) days after receiving written notice from the Company's Board of Directors (the "**Board**") that specifies the specific conduct giving rise to the alleged breach; (c) your conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) your willful neglect of duties as reasonably determined by the Board, which you fail to cure within thirty (30) days after receiving written notice from the Board that specifies the specific duties that you have failed to perform.

- "**Change in Control Event**" means the occurrence of any of the following:

  (a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (such individual, entity or group, a "**Person**") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Company (the "**Outstanding Company Common Shares**") or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that, for purposes of this clause (a), any acquisition by any entity pursuant to a transaction that complies with all of clauses (b)(1), (2) and (3) below shall not constitute a Change in Control Event;

  (b) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) full fiscal quarters as reflected in the Company's financial statements, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a "**Business Combination**"), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) fiscal quarters as reflected in the Company's financial statements, either directly or through one or more subsidiaries (a "**Parent**")) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the

then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(c) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a transaction that does not constitute a Change in Control Event under clause (b) above.

- "**Good Reason**" has the meaning given to such term in any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the occurrence (without your consent) of any one or more of the following conditions: (a) a reduction in your rate of base salary or your target annual bonus opportunity by more than ten percent (10%) from the level in effect on the date hereof; (b) a material reduction in your authorities, duties or responsibilities from the level in effect on the date hereof; (c) a change in the geographic location of your principal office with the Company (or any subsidiary or affiliate thereof or successor thereto) by more than fifty (50) miles from the location as of the date hereof; or (d) any action or inaction by the Company (or any subsidiary or affiliate thereof or successor thereto) that constitutes a material breach of the provisions of any written agreement between you and the Company or one of its subsidiaries; provided, however, that any such condition or conditions, as applicable, shall not constitute Good Reason unless (x) you provide written notice to the Company of the condition claimed to constitute Good Reason within thirty (30) days of the initial existence of such condition(s), (y) the Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof, and (z) your employment with the Company terminates within ninety (90) days following the initial existence of the condition claimed to constitute Good Reason.

- "**Release**" means the form of release agreement attached to any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a form of release agreement), shall mean a release of claims in a form acceptable to the Company.

Exhibit 10.53

SPHERE 3D CORP.
SALE BONUS PLAN

1. **The Plan**.

1.1 **Purposes**. The purposes of this Plan are (a) to motivate the Participants to embrace the objectives of the Company, particularly the goals of Company growth and the creation of value for the Company's shareholders through one or more Qualifying Transactions as specified herein and (b) to promote the success of the Company by rewarding the Participants for their dedicated service and to provide incentives for Participants to remain in the employ of the Company or a Subsidiary through one or more Qualifying Transactions. Capitalized terms used herein are defined in Section 4. It is intended that, as to any Participant that becomes entitled to a Bonus under this Plan, that such Bonus shall constitute part of the Participant's reasonable compensation for services rendered to the Company and its Subsidiaries prior to the applicable Qualifying Transaction.

1.2 **Eligibility**. The Plan Administrator, in its sole discretion, shall determine which Eligible Service Providers may participate in this Plan.

1.3 **Administration and Authorization; Power and Procedure**.

1.3.1 **Plan Administrator**. This Plan will be administered by and all Awards will be authorized by the Plan Administrator. Action of the Plan Administrator with respect to its authority under this Plan shall be taken pursuant to a majority vote or by unanimous written consent of its members. In making any determination or in taking or not taking any action under this Plan, the Plan Administrator may obtain and may rely upon the advice of experts, including employees of and professional advisors to the Company or any of its Subsidiaries. The Plan Administrator may delegate ministerial, non-discretionary functions to individuals who are officers, directors or employees of the Company or any of its Subsidiaries.

1.3.2 **Plan Awards; Interpretation; Powers of the Plan Administrator**. The Plan Administrator shall have the power to make all other determinations and take such other actions as contemplated by this Plan or as may be necessary or advisable for the administration of this Plan and the effectuation of its purposes. Such actions shall include the ability to grant Awards to Participants, and reasonably determine the form, amount and payment date of such Awards in accordance with the terms of this Plan.

1.3.3 **No Liability**. No director, officer or agent of the Company or any Subsidiary will be liable for any action, omission or decision under this Plan taken, made or omitted in good faith.

2. **Bonus Awards**.

2.1 **Award Grants**. The Plan Administrator may grant one or more Bonus Units (or any fraction thereof) under this Plan to any Eligible Service Provider. Subject to the express provisions of this Plan, the Plan Administrator will determine the number of Bonus Units subject to each Award. Each Award will be evidenced by an Award Agreement signed by a duly authorized officer of the Company and, to the extent required by the Plan Administrator, by the Participant. The Plan Administrator is not obligated to re-grant any Bonus Units that may terminate with no Bonus payable with respect thereto.

2.2 **No Right to Equity**. The Bonus Units shall be used solely as a device for the measurement and determination of the amounts to be paid as Bonuses under this Plan. The Bonus Units shall not be treated as property or as a trust fund of any kind. All amounts at any time attributable to any Award shall be and shall remain the sole property of the Company, and each Participant's rights in respect of any Award and this Plan are limited to the right to receive payment as herein provided. With respect to any Award or other rights in respect of this Plan, no Participant shall be entitled to any voting, ownership or other stockholder rights with respect to the Company or shall be owed any fiduciary duty by the Plan Administrator or the Company.

2.3 **Bonus Unit Limits**. Up to 1,000 Bonus Units may be granted under this Plan. Unless the Plan Administrator otherwise expressly provides in a Participant's Award Agreement (or by an amendment thereto), no Participant shall have protection against any dilution that may result from the issuance of additional Bonus Units under this Plan up to the maximum 1,000 Bonus Unit limit.

2.4 **Entitlement to Bonus**. In the event of a Qualifying Transaction, then, subject to the other terms and conditions of this Plan, a Participant shall be entitled to a Bonus hereunder if either:

(a) the Participant is employed by or providing services to the Company or a Subsidiary immediately prior to the Qualifying Transaction; or

(b) the Participant's employment or services was terminated by the Company or a Subsidiary without Cause or by the Participant for Good Reason, in either case during the period of one hundred twenty (120) days preceding the date of the Qualifying Transaction.

It is understood that (i) there may occur multiple Qualifying Transactions, (ii) each Qualifying Transaction may include multiple payments over time, and (iii) a new Bonus Pool shall be funded under this Plan with respect to each Qualifying Transaction; provided, however, that, in the event of a Change of Control Event that is not an Asset Sale, Bonuses under this Plan shall be payable only with respect to such Change in Control Event and, accordingly, no subsequent Change in Control Event (or other Qualifying Transaction) after the first Change in Control Event to occur that is not an Asset Sale shall be considered for purposes of this Plan.

2.5 **Amount of Payment**. If a particular Participant is entitled to a Bonus pursuant to Section 2.4, the amount of that Participant's Bonus, subject to tax withholding pursuant to Section 3.4, will equal:

(a) the Bonus Pool for the applicable Qualifying Transaction, multiplied by

(b) a fraction the numerator of which is the number of Bonus Units held by that Participant at the time of the Qualifying Transaction and the denominator of which is the total number of Bonus Units that are outstanding at the time of the Qualifying Transaction.

By way of example only, if a Participant holds 100 Bonus Units upon the closing of a Qualifying Transaction and there are 1,000 Bonus Units outstanding at that time, the Participant would be entitled to one-tenth (10%) of the Bonus Pool for that Qualifying Transaction. By contrast, if a Participant holds 100 Bonus Units upon the closing of a Qualifying Transaction and there are 800 Bonus Units outstanding at that time, the Participant would be entitled to one-eighth (12.5%) of the Bonus Pool for that Qualifying Transaction.

2.6 **Termination of Employment or Service**. Subject to the limited exception set forth in Section 2.4, a Participant must be employed by or providing services to the Company or a Subsidiary immediately prior to a particular Qualifying Transaction in order to be eligible to receive a Bonus with respect to that Qualifying Transaction. If a Participant's employment or services to the Company and its Subsidiaries terminate under any other circumstances, the Participant's Award shall, unless otherwise expressly provided by the Plan Administrator in the Participant's Award Agreement (or by an amendment thereto), automatically terminate as of the date of such termination of services, and the Participant shall have no right as to any Bonus with respect to any Qualifying Transaction that may occur after the date of such termination of services. In the event an Award terminates prior to a Bonus becoming payable with respect thereto, the Plan Administrator may (but shall not be required to) make a new Award of all or any portion of the Bonus Units subject to such terminated Award (in which case the new Award would apply only with respect to Qualifying Transactions that occur on or after the date of grant of the new Award).

2.7 **Payment Timing and Form**. To the extent a Bonus amount is payable in respect of an Award, that amount shall be paid upon or as soon as reasonably practical after the date of the applicable Qualifying Transaction and in all events not later than five (5) business days after such date; provided, however, that in the event that proceeds from the Qualifying Transaction are subject to escrow, earn-out or other deferred payment arrangements that are subject to a substantial risk of forfeiture (within the meaning of Section 409A of the Code), the Company may, to the extent that such a deferral does not result in the imposition of any tax, penalty or interest pursuant to Section 409A of the Code, pay Bonus obligations on substantially the same schedule and subject to the same conditions as proceeds are paid in connection with the Qualifying Transaction; provided, further, that the percentage of any Participant's Bonus payment that is deferred pursuant to this provision shall not exceed the percentage of the consideration payable to stockholders or the Company, as applicable, in the Qualifying Transaction that is subject to escrow, earn-out or other deferred payment arrangements.

Any Bonus payable hereunder shall be paid in cash or check at the times indicated above; provided, however, that if the consideration offered in the Qualifying Transaction is not solely cash and subject to the written consent of the Participant affected thereby, the Plan Administrator may provide for the Bonus (or a portion thereof) to be paid in the form of the consideration (whether cash, shares, or other securities or property or combination thereof) received in the Qualifying Transaction by the Company or the stockholders of the Company, as applicable, in such transaction (or the consideration received by a majority of the stockholders participating in such transaction if the stockholders were offered a choice of consideration).

2.8 **Adjustments**. The Plan Administrator shall, to such extent (if any) and at such time as it reasonably deems appropriate and equitable in the circumstances to preserve the intended level of benefits based on the structure and organization of the Company as of the Effective Date, adjust Bonus Units and Net Consideration, and Bonuses or Bonus opportunities represented by this Plan, upon or in contemplation of any sale of additional equity interests by the Company, any merger, combination, acquisition, consolidation, sale of a portion of the business or other reorganization of the Company; any split-up, spin-off or dividend distribution in respect of the Company's securities in the form of property; or any similar, unusual or extraordinary corporate transaction; provided, however, that (i) any adjustment under this Section 2.8 shall be subject to the written consent of the Company's Chief Executive Officer, (ii) in the case of such an adjustment that adversely affects an Executive Officer's rights hereunder, such adjustment shall be further subject to the written consent of the Executive Officer; and (iii) for purposes of clarity, no such adjustment shall be made in connection with or following any Qualifying Transaction to the extent that such adjustment with respect to the Qualifying Transaction or subsequent event would dilute the benefits intended to be conveyed by this Plan.

3. **Other Provisions**.

3.1 **Status**. Status as an Eligible Service Provider will not be construed as a commitment that any Award will be granted under this Plan.

3.2 **No Employment/Service Contract**. Nothing contained in this Plan (or in any other document under this Plan or related to any Award) shall confer upon any Eligible Service Provider or Participant any right to continue in the employ or other service of the Company or any Subsidiary, constitute any contract or agreement of employment or other service or affect an employee's status as an employee at will, nor shall interfere in any way with the right of the Company or any Subsidiary to change such person's compensation or other benefits, or to terminate his or her employment or other service, with or without cause at any time. Nothing in this Section 3.2, however, is intended to adversely affect any express independent right of such person under a separate employment or service contract.

3.3 **Plan Not Funded**. Awards payable under this Plan will be payable from the general assets of the Company, and no special or separate reserve, fund or deposit will be made to assure payment of such Awards. No Participant, beneficiary or other person will have any right, title or interest in any fund or in any specific asset of the Company by reason of any Award hereunder. Neither the provisions of this Plan (or of any related documents), nor the creation or adoption of this Plan, nor any action taken pursuant to the provisions of this Plan will create, or be construed to create, a trust of any kind or a fiduciary relationship between the Company or any of its Subsidiaries and any Participant, beneficiary or other person. To the extent that a Participant, beneficiary or other person acquires a right to receive payment pursuant to any Award hereunder, such right will be equal to but not greater than the right of any unsecured general creditor of the Company.

3.4 **Tax Withholding**. Upon any payment of any Award, the Company shall have the right to deduct from any amount payable to the Participant (or Personal Representative or any other person entitled to receive such payment, as the case may be) the amount of any taxes that the Company or any Subsidiary may be required to withhold with respect to such Award payment. Except for any such tax withholding obligation, the Participant (or such other person) shall be solely responsible for any and all tax liability incurred in connection with the Award.

3.5 **Death Benefits**. In the event a Participant's employment or service terminates due to the Participant's death, the termination of service rules set forth in Section 2.6 shall apply. Any Bonus (or remaining Bonus, as applicable) that the Participant may be entitled to as of the date of the Participant's death shall be paid to the Participant's estate when such amount would have otherwise been paid to the Participant (had he or she continued to live) in accordance with the other terms of this Plan.

3.6 **Incapacity**. In the event any amount is payable under this Plan to a person for whom a Personal Representative has been legally appointed, the payment shall be distributed to the duly appointed Personal Representative, without any duty on the part of the Plan Administrator to supervise or inquire into the application of any funds so paid.

3.7 **Plan and Award Amendments and Termination**. The Plan Administrator may, at any time, terminate or, from time to time, amend, modify or suspend this Plan or an Award Agreement, in whole or in part, but only with the written consent of the Company's Chief Executive Officer and, to the extent that such amendment, modification, suspension or termination of this Plan or an Award Agreement may adversely affect an Executive Officer's rights hereunder or thereunder, the written consent of such Executive Officer. No Awards may be granted during any suspension of this Plan or after termination of this Plan. All authority of the Plan Administrator with respect to Awards hereunder will continue during any suspension of this Plan and in respect of Awards outstanding upon or following the termination of this Plan. The Plan Administrator may not, however, without the written consent of the Participant affected thereby, amend, terminate or suspend this Plan or an Award Agreement in any manner materially adverse to the Participant's rights, benefits or bonus opportunities hereunder or thereunder. Adjustments in accordance with Section 2.8 shall not, however, require the consent of the affected Participant except as expressly provided in such section. Notwithstanding the foregoing provisions, if this Plan is not earlier terminated by the Plan Administrator, this Plan shall automatically terminate on the fifth (5^{th}) anniversary of the Effective Date, and no Bonuses shall be payable hereunder upon such termination; provided that any termination of the Plan pursuant to this sentence shall not affect any Participant's right as to a Bonus with respect to a Qualifying Transaction that occurred prior to such termination.

3.8 **Successors**. In the event of a merger, consolidation or transfer or sale of all or substantially all of the assets of the Company with or to any other individual(s) or entity, this Plan shall be binding upon and inure to the benefit of such successor and such successor shall discharge and perform all the promises, covenants, duties and obligations of the Company hereunder.

3.9 **Choice of Law**. This Plan, the Awards, all documents evidencing Awards and all other related documents will be governed by, and construed in accordance with, the laws of the state of California, without regard to the choice of law provisions thereof.

3.10 **Severability**. If it is determined that any provision of this Plan or an Award Agreement is invalid and unenforceable, the remaining provisions of this Plan and/or the Award Agreement, as applicable, will continue in effect provided that the essential economic terms of this Plan and the Award can still be enforced.

3.11 **Construction of Plan**. This Plan is a negotiated bonus arrangement between the Company and each Participant. The Company and each Participant agree and stipulate that the rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Plan to favor the Company and/or any Participant against the other. Such agreement and stipulation by a Participant is a condition precedent to the Participant's eligibility for a bonus under this Plan.

3.12 **Captions; Construction of Terms**. Captions and headings are given to the sections and subsections of this Plan solely as a convenience to facilitate reference. Such headings will not be deemed in any way material or relevant to the construction or interpretation of this Plan or any provision thereof. Whenever the context may require, any pronouns used in this Plan shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.

3.13 **Section 409A**. This Plan and each Award Agreement hereunder shall be construed and interpreted to comply with Section 409A of the Code so as to avoid the imposition of any tax, penalties or interest under Section 409A of the Code.

3.14 **Section 280G**.

3.14.1 **Limitation on Benefits**. Notwithstanding anything contained in this Agreement to the contrary, to the extent that the payments and benefits provided under this Plan and benefits provided to, or for the benefit of, the Participant under any other Company plan or agreement (such payments or benefits are collectively referred to as the "**Benefits**") would be subject to the excise tax (the "**Excise Tax**") imposed under Section 4999 of the Code, the Benefits shall be reduced (but not below zero) if and to the extent that a reduction in the Benefits would result in the Participant retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if the Participant received all of the Benefits (such reduced amount is referred to hereinafter as the "**Limited Benefit Amount**"). Unless the Participant shall have given prior written notice specifying a different order to the Company to effectuate the Limited Benefit Amount, any such notice consistent with the requirements of Section 409A of the Code to avoid the imputation of any tax, penalty or interest thereunder, the Company shall reduce or eliminate the Benefits by first reducing or eliminating those payments or benefits which are not payable in cash and then by reducing or eliminating cash payments, in each case in reverse order beginning with payments or benefits which are to be paid the farthest in time from the Determination (as hereinafter defined). Any notice given by the Participant pursuant to the preceding sentence shall take precedence over the provisions of any other plan, arrangement or agreement governing the Participant's rights and entitlements to any benefits or compensation..

3.14.2 **Determination**. A determination as to whether the Benefits shall be reduced to the Limited Benefit Amount pursuant to this Agreement and the amount of such Limited Benefit Amount shall be made by the Company's independent public accountants or another certified public accounting firm or executive compensation consulting firm of national reputation designated by the Company (the "**Firm**") at the Company's expense. The Firm shall provide its determination (the "**Determination**"), together with detailed supporting calculations and documentation to the Company and the Participant within ten (10) business days of the date of termination of the Participant's employment, if applicable, or such other time as reasonably requested by the Company or the Participant (provided the Participant reasonably believes that any of the Benefits may be subject to the Excise Tax), and if the Firm determines that no Excise Tax is payable by the Participant with respect to any Benefits, it shall furnish the Participant with an opinion reasonably acceptable to the Participant that no Excise Tax will be imposed with respect to any such Benefits. Unless the Participant provides written notice to the Company within ten (10) business days of the delivery of the Determination to the Participant that he disputes such Determination, the Determination shall be binding, final and conclusive upon the Company and the Participant.

3.15 **Effective Date**. This Plan is effective as of the Effective Date.

4. **Definitions**. Capitalized terms used in this Plan are used as defined below if not otherwise defined herein:

"**Aggregate Consideration**" means, with respect to a particular Qualifying Transaction and without duplication, the sum of the total proceeds and other consideration paid or received and to be paid or received by the Company or by the stockholders of the Company (which shall include amounts paid or to be paid into escrow or subject to earn-out or other deferred payment arrangements), including, without limitation: (a) cash; (b) notes, securities and other property valued at the fair market value thereof as measured as of the date of the Qualifying Transaction; (c) any extraordinary dividends or distributions of cash or property paid in connection with the Qualifying Transaction; and (d) any contingent consideration relating to future earnings, operations or other future matters that is payable to any person or entity after and in connection with the Qualifying Transaction. For avoidance of doubt, Aggregate Consideration shall not include: (x) any amounts payable in cash or other consideration under consulting, employment or other arrangements between any acquirer and any employee, former employee, director or consultant of the Company or any of its Subsidiaries for services rendered or to be rendered after the Qualifying Transaction or (y) any amount that would otherwise be Aggregate Consideration but has previously been taken into account under this Plan with respect to a prior Qualifying Transaction. If all or any portion of the Aggregate Consideration is paid in the form of assets other than cash, the value of such non-cash consideration shall be the fair market value thereof as measured as of the date of the Qualifying Transaction, provided, that if such consideration includes securities with an existing public trading market, the value thereof shall be the average of the closing price for such securities on each of the ten (10) trading days immediately preceding the last trading day prior to the Qualifying Transaction or as otherwise provided in the definitive documentation for such Qualifying Transaction.

"**Asset Sale**" means any Qualifying Transaction that is a sale of assets (including, any portion, all or substantially all of the assets of the Company).

"**Award**" means an award of Bonus Units authorized by and granted under this Plan.

"**Award Agreement**" means any writing, approved by the Plan Administrator, setting forth the terms of an Award that has been duly authorized and approved. Each Award Agreement shall be in the form attached hereto as Appendix A or such other form as the Plan Administrator may from time to time prescribe.

"**Board**" means the Board of Directors of the Company.

"**Bonus**" means a bonus right or amount, as the context may require under and in accordance with this Plan.

“**Bonus Pool**” means, as applied to a particular Qualifying Transaction, an amount equal to twenty percent (20%) of the Net Consideration for such Qualifying Transaction.

“**Bonus Unit**” means a device used solely for determining bonuses to be paid out under this Plan.

“**Cause**” has the meaning given to such term in the applicable Award Agreement.

“**Change in Control Event**” means the occurrence of any of the following:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a “**Person**”)) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Company (the “**Outstanding Company Common Shares**”) or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “**Outstanding Company Voting Securities**”); provided, however, that, for purposes of this clause (a), any acquisition by any entity pursuant to a transaction that complies with all of clauses (b)(1), (2) and (3) below shall not constitute a Change in Control Event;

(b) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company’s revenue for the immediately preceding four (4) full fiscal quarters as reflected in the Company’s financial statements, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a “**Business Combination**”), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or assets of the Company that account for more than fifty percent (50%) of the Company’s revenue for the immediately preceding four (4) fiscal quarters as reflected in the Company’s financial statements, either directly or through one or more subsidiaries (a “**Parent**”)) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(c) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a transaction that does not constitute a Change in Control Event under clause (b) above.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company**” means Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario, and its successors.

“**Effective Date**” shall mean December 18, 2017, the date of Board approval of this Plan.

“**Eligible Service Provider**” means any employee or consultant of the Company or a Subsidiary.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Executive Officer**” means the Company’s Chief Executive Officer and the Company’s other executive officers who report directly to the Chief Executive Officer.

“**Good Reason**” has the meaning give to such term in the applicable Award Agreement.

“**Net Consideration**” means, with respect to a particular Qualifying Transaction, an amount equal to (a) the Aggregate Consideration for such Qualifying Transaction, minus (b) the Net Debt for such Qualifying Transaction, minus (c) the Stay Bonuses for such Qualifying Transaction, minus (d) the Transaction Expenses for such Qualifying Transaction.

“**Net Debt**” means, with respect to a particular Qualifying Transaction, (a) the aggregate amount of the Company’s outstanding debt at the time of the Qualifying Transaction (excluding any such debt that is assumed by the acquirer or any of its Subsidiaries in connection with the Qualifying Transaction), minus (b) the sum of the Company’s aggregate cash on hand, short-term investments and accounts receivable at the time of the Qualifying Transaction, minus (c) the aggregate amount that has previously been taken into account as “Net Debt” in determining the Net Consideration for each Qualifying Transaction (if any) that occurred prior to such Qualifying Transaction.

“**Participant**” means an Eligible Service Provider who has been granted an Award under this Plan, which Award has not terminated pursuant to Section 2.6 of the Plan (and, when the context so requires, any beneficiary of a deceased Participant or Personal Representative of an incapacitated Participant).

“**Person**” means any individual, partnership, limited partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or governmental entity or department, agency or political subdivision thereof.

“**Personal Representative**” means the person or persons who, upon the disability or incompetence of a Participant, has acquired on behalf of the Participant, by legal proceeding or otherwise, the power to exercise the rights or receive benefits under this Plan by virtue of having become the legal representative of the Participant.

“**Plan**” means this Sphere 3D Corp. Sale Bonus Plan, as it may hereafter be amended from time to time.

“**Plan Administrator**” shall mean the Compensation Committee of the Board, provided that the Board may provide at any time that the Plan Administrator shall be the Board or another committee of the Board.

“**Qualifying Transaction**” means either (a) a Change in Control Event or (b) a sale of any assets of the Company or any of its Subsidiaries, in each case if and to the extent such transaction is consummated prior to the termination of this Plan.

“**Stay Bonuses**” means, as applied to a particular Qualifying Transaction, the aggregate amount of the bonuses payable by the Company in connection with or prior to the applicable Qualifying Transaction pursuant to the “Stay Bonus Opportunity” letter agreements entered into by the Company and certain Participants in this Plan on or about the Effective Date; provided, however, that to the extent any such bonus has previously been taken into account in determining the Net Consideration for any Qualifying Transaction that occurred prior to such Qualifying Transaction, such bonus amount shall not be included as a Stay Bonus in determining the Net Consideration for such Qualifying Transaction. For purposes of clarity, any severance, bonus or other amounts payable by the Company pursuant to any employment, retention or similar agreement (other than the Stay Bonus Opportunity letter agreements) shall not be considered a Stay Bonus for purposes of this Plan.

"**Subsidiary**" means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

"**Transaction Expenses**" means, as applied to a particular Qualifying Transaction, the aggregate amount of the expenses incurred by the Company for investment banking, financial advisory or legal services, in each case, in connection with the applicable Qualifying Transaction (and shall not include any fees for any such services that were not incurred in connection with a Qualifying Transaction); provided, however, that to the extent any such expense has previously been taken into account in determining the Net Consideration for any Qualifying Transaction that occurred prior to such Qualifying Transaction, such expense shall not be included as a Transaction Expense in determining the Net Consideration for such Qualifying Transaction.

APPENDIX A
FORM OF AWARD AGREEMENT

SPHERE 3D CORP.
SALE BONUS PLAN
AWARD AGREEMENT

THIS AWARD AGREEMENT (this "**Agreement**") is entered into as of __________ by and between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario (the "**Company**"), and ______________ (the "**Participant**").

The Company hereby grants to the Participant an award (this "**Award**") under the Sphere 3D Corp. Sale Bonus Plan (the "**Plan**"). This Award is subject to all of the terms and conditions set forth in this Agreement and in the Plan. The Participant does hereby accept the Award on such terms and conditions. Capitalized terms not defined herein are defined in the Plan.

The number of Bonus Units covered by this Award is **[_____]**.

1. **<u>Continuance of Services Required</u>**. The Bonus opportunity represented by this Award is subject to the termination of service rules set forth in Section 2.6 of the Plan. Employment for only a portion of any period, even if a substantial portion of such period, will not entitle the Participant to any proportionate payment or other rights with respect to the Award.

2. **<u>Amount, Timing and Manner of Payment</u>**. The amount, timing and manner of payment of the Participant's Bonus (if any) with respect to this Award shall be calculated in accordance with the Plan, including, without limitation, Sections 2.4, 2.5, 2.6, 2.7, 2.8, 3.4 and 3.14.

3. **<u>Definition of Cause</u>**. For purposes of this Award, "**Cause**" has the meaning given to such term in any employment agreement between the Participant and the Company or any of its Subsidiaries as in effect on the date of grant of this Award or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on the Participant's part with respect to the Participant's obligations or otherwise relating to the business of the Company or any of its Subsidiaries that causes material harm to the Company or such Subsidiary or to the reputation of the Company or such Subsidiary; (b) the Participant's material breach of any agreement between the Participant and the Company or one of its Subsidiaries, which breach the Participant fails to cure within thirty (30) days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) the Participant's conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) the Participant's willful neglect of duties as reasonably determined by the Board, which the Participant fails to cure within thirty (30) days after receiving written notice from the Board that specifies the specific duties that the Participant has failed to perform.

4. **<u>Definition of Good Reason</u>.** For purposes of this Award, "**Good Reason**" has the meaning given to such term in any employment agreement between the Participant and the Company or any of its subsidiaries as in effect on the date of grant of this Award or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the occurrence (without the Participant's consent) of any one or more of the following conditions: (a) a reduction in the Participant's rate of base salary or the Participant's target annual bonus opportunity by more than ten percent (10%) from the level in effect on the Effective Date; (b) a material reduction in the Participant's authorities, duties or responsibilities from the level in effect on the Effective Date; (c) a change in the geographic location of the Participant's principal office with the Company (or any subsidiary or affiliate thereof or successor thereto) by more than fifty (50) miles from the location as of the Effective Date; or (d) any action or inaction by the Company (or any subsidiary or affiliate thereof or successor thereto) that constitutes a material breach of the provisions of any written agreement between the Participant and the Company or one of its Subsidiaries; provided, however, that any such condition or conditions, as applicable, shall not constitute Good Reason unless (x) the Participant provides written notice to the Company of the condition claimed to constitute Good Reason within thirty (30) days of the initial existence of such condition(s), (y) the Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof, and (z) the Participant's employment with the Company terminates within ninety (90) days following the initial existence of the condition claimed to constitute Good Reason.

5. **No Right to Equity; Plan Not Funded**. With respect to the Plan, this Agreement and the Bonus Units granted hereunder, the Participant (a) has no voting or other ownership rights with respect to the Company and (b) is owed no fiduciary duty by the Company or the Plan Administrator. In accordance with Section 3.3 of the Plan, Awards payable under this Agreement will be payable from the general assets of the Company, and no special or separate reserve, fund or deposit will be made to assure payments of this Award. No Participant, beneficiary or other person will have any right, title or interest in any fund or in any specific asset of the Company by reason of this Agreement. To the extent that a Participant, beneficiary or other person acquires a right to receive payment pursuant to this Agreement, such right will be the same as and no greater than the right of any unsecured general creditor of the Company.

6. **No Employment/Service Commitment**. Nothing contained in this Agreement or the Plan constitutes an employment or service commitment by the Company or any Subsidiary, affects the Participant's status as an employee at will who is subject to termination without cause, confers upon the Participant any right to remain employed by or in service to the Company or any Subsidiary, interferes in any way with the right of the Company or any Subsidiary at any time to terminate such employment or service, or affects the right of the Company or any Subsidiary to increase or decrease the Participant's other compensation. If the Participant is employed by a Subsidiary (and not by the Company) and that entity ceases for any reason to be a Subsidiary, then the Participant shall thereupon be deemed to have terminated employment with the Company and its Subsidiaries for purposes of the Plan (unless, in connection with such event, the Participant otherwise becomes employed by the Company or another Subsidiary that continues as such following the event).

7. **The Plan**. The grant of this Award and any payment in respect hereof are subject to, and the Company and the Participant agree to be bound by, the provisions of the Plan. The provisions of the Plan are incorporated herein by this reference. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and the Plan, the terms and conditions of the Plan shall govern. The Participant acknowledges receiving a copy of the Plan and reading its provisions, and agrees to be bound by the terms thereof and of this Agreement. Provisions of the Plan that grant discretionary authority to the Plan Administrator shall not create any rights in the Participant, unless such rights are expressly set forth herein or are otherwise in the sole discretion of the Plan Administrator so conferred by appropriate action of the Plan Administrator under the Plan after the date hereof.

8. **Non-Transferability; Successors**. This Award and any other rights of the Participant under this Agreement and/or the Plan are nontransferable, except in accordance with the death benefit and incapacity provisions set forth in Sections 3.5 and 3.6 of the Plan, respectively. In the event of a merger, consolidation or transfer or sale of all or substantially all of the assets of the Company with or to any other individual(s) or entity, this Agreement shall be binding upon and inure to the benefit of such successor and such successor shall discharge and perform all the promises, covenants, duties and obligations of the Company hereunder.

9. **Entire Agreement**. This Agreement and the Plan together constitute the entire agreement and supersede all prior understandings and agreements, written or oral, of the parties hereto with respect to the subject matter hereof.

10. Governing Law.

10.1 California Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California, without regard to conflict of law principles thereunder.

10.2 Construction. The Participant acknowledges and agrees that this Agreement and the Plan will be construed in accordance with Section 3.11 of the Plan.

10.3 Severability. If it is determined that any provision of this Agreement or the Plan is invalid and unenforceable, the remaining provisions of this Agreement and/or the Plan, as applicable, will continue in effect provided that the essential economic terms of this Agreement and the Plan can still be enforced.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written above.

PARTICIPANT **SPHERE 3D CORP.**

By:__

Signature

Print Name:__________

__

Print Name Title:_____________

Exhibit 10.54

SPHERE 3D CORP.
2015 PERFORMANCE INCENTIVE PLAN
RESTRICTED STOCK UNIT AWARD AGREEMENT

THIS RESTRICTED STOCK UNIT AWARD AGREEMENT (this "**Agreement**") dated as of December 18, 2017 by and between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario (the "**Corporation**"), and [NAME] (the "**Grantee**") evidences the award (the "**Award**") granted by the Corporation to the Grantee as to the number of the Corporation's stock units ("**Stock Units**") first set forth below.

Number of Stock Units: [1] [NUMBER]   **Award Date:** December 18, 2017

Vesting Commencement Date: December 18, 2017

Vesting[1] Subject to Section 6 below, the Stock Units subject to the Award will vest in six (6) equal installments, with the first installment vesting six (6) months after the Vesting Commencement Date and an additional installment vesting at the end of each six-month period thereafter:

The Award is granted under the Sphere 3D Corp. 2015 Performance Incentive Plan (including the Canadian Residents Addendum thereto, if applicable), as amended from time to time (the "**Plan**"), and subject to the Terms and Conditions of Restricted Stock Units (the "**Terms**") attached to this Agreement (incorporated herein by this reference) and to the Plan. The Award has been granted to the Grantee in addition to, and not in lieu of, any other form of compensation otherwise payable or to be paid to the Grantee. Capitalized terms are defined in the Plan if not defined herein. The parties agree to the terms of the Award set forth herein. The Grantee acknowledges receipt of a copy of the Terms, the Plan and the Prospectus for the Plan.

As used herein, the term "**stock unit**" means a non-voting unit of measurement which is deemed for bookkeeping purposes to be equivalent to one outstanding Common Share of the Corporation (subject to adjustment as provided in Section 7.1 of the Plan) solely for purposes of the Plan and this Agreement. The Stock Units shall be used solely as a device for the determination of the payment to eventually be made to the Grantee if such Stock Units vest pursuant to the terms hereof. The Stock Units shall not be treated as property or as a trust fund of any kind.

"GRANTEE"	**SPHERE 3D CORP.** a corporation incorporated under the laws of the Province of Ontario
______________________________ *Signature*	By:______________________________
___ *Print Name*	Print Name:
	Title:

Subject to adjustment under Section 7.1 of the Plan.

SPHERE 3D CORP.
2015 PERFORMANCE INCENTIVE PLAN
TERMS AND CONDITIONS OF RESTRICTED STOCK UNITS

1. **Vesting**. Subject to Section 6 below, the Award shall vest and become nonforfeitable as set forth on the cover page of this Agreement.

2. **Continuance of Employment/Service**. The vesting schedule requires continued employment or service through each applicable vesting date as a condition to the vesting of the applicable installment of the Award and the rights and benefits under this Agreement. Employment or service for only a portion of the vesting period, even if a substantial portion, will not entitle the Grantee to any proportionate vesting or avoid or mitigate a termination of rights and benefits upon or following a termination of employment or services as provided in Section 6 below or under the Plan.

Nothing contained in this Agreement or the Plan constitutes an employment or service commitment by the Corporation, affects the Grantee's status as an employee at will who is subject to termination without cause, confers upon the Grantee any right to remain employed by or in service to the Corporation or any Subsidiary, interferes in any way with the right of the Corporation or any Subsidiary at any time to terminate such employment or services, or affects the right of the Corporation or any Subsidiary to increase or decrease the Grantee's other compensation or benefits. Nothing in this Agreement, however, is intended to adversely affect any independent contractual right of the Grantee without his or her consent thereto.

3. **No Dividend and Voting Rights**. The Grantee shall have no rights as a shareholder of the Corporation, no dividend rights and no voting rights, with respect to the Stock Units and any Common Shares underlying or issuable in respect of such Stock Units until such Common Shares are actually issued to and held of record by the Grantee. No adjustments will be made for dividends or other rights of a holder for which the record date is prior to the date of issuance of such shares.

4. **Restrictions on Transfer**. Except as provided in Section 5.7 of the Plan, neither the Award, nor any interest therein or amount or shares payable in respect thereof may be sold, assigned, transferred, pledged or otherwise disposed of, alienated or encumbered, either voluntarily or involuntarily. The transfer restrictions in the preceding sentence shall not apply to (a) transfers to the Corporation, or (b) transfers by will or the laws of descent and distribution.

5. **Timing and Manner of Payment of Stock Units**. Each Stock Unit that becomes vested pursuant to the terms hereof (the date of such vesting, the "**Vesting Date**" of such Stock Unit) will be paid on or as soon as practicable after the Vesting Date (and in all events within two and one-half months following the Vesting Date). In payment of the Stock Units, the Corporation shall deliver to the Grantee a number of Common Shares (either by delivering one or more certificates for such shares or by entering such shares in book entry form, as determined by the Corporation in its discretion, and such shares to be issued from treasury if and to the extent required by the Canadian Residents Addendum to the Plan) equal to the number of Stock Units subject to this Award that vest on the applicable Vesting Date, unless such Stock Units terminate prior to the given Vesting Date pursuant to Section 6. The Corporation's obligation to deliver Common Shares or otherwise make payment with respect to vested Stock Units is subject to the condition precedent that the Grantee or other person entitled under the Plan to receive any shares with respect to the vested Stock Units deliver to the Corporation any representations or other documents or assurances required pursuant to Section 8.1 of the Plan. The Grantee shall have no further rights with respect to any Stock Units that are paid or that terminate pursuant to Section 6.

6. Effect of Termination of Employment or Service; Change in Control Event.

(a) General. Except as provided in Section 6(b) below, the Grantee's Stock Units shall terminate to the extent such units have not become vested prior to the Grantee's Termination Date (as defined below). If any unvested Stock Units are terminated hereunder, such Stock Units shall automatically terminate and be cancelled as of the Termination Date without payment of any consideration by the Corporation and without any other action by the Grantee, or the Grantee's beneficiary or personal representative, as the case may be. For these purposes, "**Termination Date**" means the Grantee's last day of actual and active employment or service with the Corporation or any of its Subsidiaries. For greater certainty, no period of notice of termination, if any, or payment in lieu of notice that is given or ought to have been given pursuant to the Grantee's applicable employment agreement, contract for service or at law that follows or is in respect of a period after the last date of actual and active employment will be considered as extending Grantee's period of employment or services for purposes of determining the Grantee's entitlement under the Award.

(b) Acceleration Upon Certain Events.

(1) Notwithstanding Section 6(a), if either (i) a Change in Control Event occurs and the Grantee's employment or service with the Corporation or one of its Subsidiaries continues through the date of the Change in Control Event or (ii) prior to a Change in Control Event, the Grantee's employment or service with the Corporation or one of its Subsidiaries terminates due to (x) the Grantee's Disability or death, (y) a termination by the Corporation or such Subsidiary without Cause or (z) a termination by the Grantee for Good Reason, the Stock Units, to the extent then outstanding and unvested, shall vest in full upon the date of the Change in Control Event or the Grantee's Termination Date, as applicable.

(2) Notwithstanding any other provision herein or in the Plan, as a condition precedent to any acceleration of vesting pursuant to Section 6(b)(1), the Grantee shall provide the Corporation with a valid, executed general release agreement in the form attached to any employment, severance, retention or similar agreement the Grantee may have with the Corporation or any of its Subsidiaries in effect on the Award Date (or, if there is no such agreement or no such form of release attached thereto, in a form acceptable to the Corporation), and such release shall have not been revoked pursuant to any revocation rights afforded by applicable law. The Corporation shall provide the final form of release agreement to the Grantee not later than seven (7) days following the date of the event that triggers such accelerated vesting of the Stock Units, and the Grantee shall be required to execute and return such release to the Corporation within twenty-one (21) days (or forty-five (45) days if such longer period of time is required to make the release maximally enforceable under applicable law) after the Corporation provides the form of release to the Grantee. If the period for the Grantee to provide such release spans two calendar years, then the payment of the Stock Units as provided in Section 5 shall in all events be made in the second of such two years.

(c) Defined Terms. For purposes of this Agreement, the terms Cause, Good Reason, Disability and Change in Control Event have the meanings given to such terms on Exhibit A hereto.

7. Adjustments Upon Specified Events. Upon the occurrence of certain events relating to the Corporation's stock contemplated by Section 7.1 of the Plan (including, without limitation, an extraordinary cash dividend on such stock), the Administrator shall make adjustments in accordance with such section in the number of Stock Units then outstanding and the number and kind of securities that may be issued in respect of the Award.

8. **<u>Tax Withholding</u>**. The Corporation shall reasonably determine the amount of any federal, state, local or other income, employment, or other taxes which the Corporation or any of its Subsidiaries may reasonably be obligated to withhold with respect to the grant, vesting or other event with respect to the Stock Units. If such withholding event occurs in connection with the distribution of Common Shares in respect of the Stock Units and subject to compliance with all applicable laws, the Grantee hereby agrees that the appropriate number of whole shares, valued at their then fair market value (with the "fair market value" of such shares determined in accordance with the applicable provisions of the Plan), to satisfy any withholding obligations of the Corporation or its Subsidiaries with respect to such distribution at the minimum applicable withholding rates (such number of shares, the "**Minimum Withholding Shares**") shall automatically be sold by or on behalf of the Grantee on the open market and the proceeds of such sale shall be promptly remitted to the Corporation to satisfy such tax withholding obligations. In the event the Grantee has (prior to the applicable Vesting Date) entered into an irrevocable arrangement (on terms reasonably acceptable to the Corporation) with a third-party broker to use the proceeds of a sale of Common Shares on the market to provide for tax withholding in connection with any payment of the Stock Units and has provided the terms of such arrangement to the Corporation (a "**Broker Arrangement**"), the Grantee and the Corporation agree that, at the time of such payment of the Stock Units, the Corporation will deliver to the Grantee's designated broker a number of whole Common Shares equal to the Minimum Withholding Shares. If there is no such Broker Arrangement in place on the applicable Vesting Date, such sale of the Minimum Withholding Shares shall be conducted through a broker designated by the Corporation. The Grantee shall execute such documents as may reasonably be requested by the Corporation or the broker, as applicable, in order to implement such transactions and shall otherwise comply with the administrative rules and procedures established by the Corporation with respect to such transactions. If, however, any withholding event occurs with respect to the Stock Units other than in connection with the distribution of shares of Common Stock in respect of the Stock Units, or if the Corporation's withholding obligations cannot be satisfied by such market sale or such withholding and reacquisition of shares as described above because such a sale, withholding or reacquisition, as the case may be, would cause the Corporation to violate applicable law, the Corporation shall be entitled to require a cash payment by or on behalf of the Grantee and/or to deduct from other compensation payable to the Grantee the amount of any such withholding obligations.

9. **<u>Limitation on Benefits; Section 280G</u>**. Notwithstanding any other provision herein or in the Plan, the benefits under this Award are subject to the provisions of <u>Exhibit B</u> hereto.

10. **<u>Notices</u>**. Any notice to be given under the terms of this Agreement shall be in writing and addressed to the Corporation at its principal office to the attention of the Secretary, and to the Grantee at the Grantee's last address reflected on the Corporation's records, or at such other address as either party may hereafter designate in writing to the other. Any such notice shall be given only when received, but if the Grantee is no longer an employee of or in service to the Corporation, shall be deemed to have been duly given by the Corporation when enclosed in a properly sealed envelope addressed as aforesaid, registered or certified, and deposited (postage and registry or certification fee prepaid) in a post office or branch post office regularly maintained by the United States Government.

11. **<u>Plan</u>**. The Award and all rights of the Grantee under this Agreement are subject to the terms and conditions of the provisions of the Plan (including, for greater certainty and to the extent applicable, the Canadian Residents Addendum to the Plan), incorporated herein by this reference. In the event of any conflict between the provisions of the Plan and this Option Agreement, the provisions of the Plan shall control. The Grantee agrees to be bound by the terms of the Plan and this Agreement. The Grantee acknowledges having read and understanding the Plan, the Prospectus for the Plan, and this Agreement. Unless otherwise expressly provided in other sections of this Agreement, provisions of the Plan that confer discretionary authority on the Board or the Administrator do not (and shall not be deemed to) create any rights in the Grantee unless such rights are expressly set forth herein or are otherwise in the sole discretion of the Board or the Administrator so conferred by appropriate action of the Board or the Administrator under the Plan <u>after</u> the date hereof.

12. Entire Agreement; Amendment. This Agreement and the Plan together constitute the entire agreement and supersede all prior understandings and agreements, written or oral, of the parties hereto with respect to the subject matter hereof. The Plan and this Agreement may be amended pursuant to Section 8.6 of the Plan. Such amendment must be in writing and signed by the Corporation. The Corporation may, however, unilaterally waive any provision hereof in writing to the extent such waiver does not adversely affect the interests of the Grantee hereunder, but no such waiver shall operate as or be construed to be a subsequent waiver of the same provision or a waiver of any other provision hereof. Notwithstanding the foregoing, the Corporation may, without the consent of the Grantee, amend the tax-withholding procedures set forth in Section 8 above to provide that the Corporation's tax withholding obligations in connection with a distribution of Common Shares in respect of the Stock Units shall be satisfied by the Corporation reducing the number of Common Shares subject to such distribution by the number of the Minimum Withholding Shares (as opposed to a market sale of such shares); provided, however, that if the Corporation adopts such an amendment of the procedures set forth in Section 8, such procedures shall not be further amended within the one-year period thereafter.

13. Limitation on Grantee's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Corporation as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. The Grantee shall have only the rights of a general unsecured creditor of the Corporation with respect to amounts credited and benefits payable, if any, with respect to the Stock Units, and rights no greater than the right to receive the Common Shares as a general unsecured creditor with respect to Stock Units, as and when payable hereunder.

14. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

15. Section Headings. The section headings of this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

16. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to conflict of law principles thereunder.

17. Construction. It is intended that the terms of the Award will not result in the imposition of any tax liability pursuant to Section 409A of the Code. The Award is intended as a "short-term deferral" under Section 409A of the Code, and this Agreement shall be construed and interpreted consistent with that intent.

18. Language. The parties hereto have agreed that this Agreement and the Plan be drafted in English. Les parties aux présentes ont convenu que le présent document et les règles du régime soient rédigés en anglais.

19. No Advice Regarding Grant. The Grantee is hereby advised to consult with his or her own tax, legal and/or investment advisors with respect to any advice the Grantee may determine is needed or appropriate with respect to the Stock Units (including, without limitation, to determine the foreign, state, local, estate and/or gift tax consequences with respect to the Award). Neither the Corporation nor any of its officers, directors, affiliates or advisors makes any representation (except for the terms and conditions expressly set forth in this Award Agreement) or recommendation with respect to the Award. Except for the withholding rights set forth in Section 8 above, the Grantee is solely responsible for any and all tax and other liability that may arise with respect to the Award or any sale of shares issued or delivered with respect to the Award.

20. Insider Trading Rules. The Grantee hereby acknowledges being subject to all applicable laws, rules and regulations, as well as Corporation policies, regarding insider trading.

EXHIBIT A

DEFINED TERMS

For purposes of this Agreement, the following definitions shall apply:

- "**Cause**" has the meaning given to such term in any employment agreement between the Grantee and the Corporation or any of its Subsidiaries as in effect on the Award Date or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on the Grantee's part with respect to the Grantee's obligations or otherwise relating to the business of the Corporation or any of its Subsidiaries that causes material harm to the Corporation or such Subsidiary or to the reputation of the Corporation or such Subsidiary; (b) the Grantee's material breach of any agreement between the Grantee and the Corporation or one of its Subsidiaries, which breach the Grantee fails to cure within thirty (30) days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) the Grantee's conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) the Grantee's willful neglect of duties as reasonably determined by the Board, which the Grantee fails to cure within thirty (30) days after receiving written notice from the Board that specifies the specific duties that the Grantee has failed to perform.

- "**Good Reason**" has the meaning given to such term in any employment agreement between the Grantee and the Corporation or any of its Subsidiaries as in effect on the Award Date or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the occurrence (without the Grantee's consent) of any one or more of the following conditions: (a) a reduction in the Grantee's rate of base salary or the Grantee's target annual bonus opportunity by more than ten percent (10%) from the level in effect on the Award Date; (b) a material reduction in the Grantee's authorities, duties or responsibilities from the level in effect on the Award Date; (c) a change in the geographic location of the Grantee's principal office with the Corporation (or any subsidiary or affiliate thereof or successor thereto) by more than fifty (50) miles from the location as of the Award Date; or (d) any action or inaction by the Corporation (or any subsidiary or affiliate thereof or successor thereto) that constitutes a material breach of the provisions of any written agreement between the Grantee and the Corporation or one of its Subsidiaries; provided, however, that any such condition or conditions, as applicable, shall not constitute Good Reason unless (x) the Grantee provides written notice to the Corporation of the condition claimed to constitute Good Reason within thirty (30) days of the initial existence of such condition(s), (y) the Corporation fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof, and (z) the Grantee's employment with the Corporation terminates within ninety (90) days following the initial existence of the condition claimed to constitute Good Reason.

- "**Disability**" has the meaning given to such term (or a similar term) in any employment agreement between the Grantee and the Corporation or any of its Subsidiaries as in effect on the Award Date or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the Grantee (as determined solely by the Administrator on the basis of such medical evidence as the Administrator deems warranted under the circumstances) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

- "**Change in Control Event**" means any of the following:

  (i) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a "**Person**")) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Corporation (the "**Outstanding Company Common Shares**") or (2) the combined voting power of the then-outstanding voting securities of the Corporation entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that, for purposes of this clause (i), any acquisition by any entity pursuant to a transaction that complies with all of clauses (ii)(1), (2) and (3) below shall not constitute a Change in Control Event;

(ii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Corporation or any of its Subsidiaries, a sale or other disposition of assets of the Corporation that account for more than fifty percent (50%) of the Corporation's revenue for the immediately preceding four (4) full fiscal quarters as reflected in the Corporation's financial statements, or the acquisition of assets or stock of another entity by the Corporation or any of its Subsidiaries (each, a "**Business Combination**"), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Corporation or assets of the Corporation that account for more than fifty percent (50%) of the Corporation's revenue for the immediately preceding four (4) fiscal quarters as reflected in the Corporation's financial statements, either directly or through one or more subsidiaries (a "**Parent**")) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Corporation or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(iii) Approval by the shareholders of the Corporation of a complete liquidation or dissolution of the Corporation other than in the context of a transaction that does not constitute a Change in Control Event under clause (ii) above.

EXHIBIT B

SECTION 280G

1. **<u>Limitation on Benefits</u>**. Notwithstanding anything contained in this Agreement or the Plan to the contrary, to the extent that the payments and benefits provided under the Award and benefits provided to, or for the benefit of, the Grantee under any other Corporation plan or agreement (such payments or benefits are collectively referred to as the "**Benefits**") would be subject to the excise tax (the "**Excise Tax**") imposed under Section 4999 of the Code, the Benefits shall be reduced (but not below zero) if and to the extent that a reduction in the Benefits would result in the Grantee retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if the Grantee received all of the Benefits (such reduced amount is referred to hereinafter as the "**Limited Benefit Amount**"). Unless the Grantee shall have given prior written notice specifying a different order to the Corporation to effectuate the Limited Benefit Amount, any such notice consistent with the requirements of Section 409A of the Code to avoid the imputation of any tax, penalty or interest thereunder, the Corporation shall reduce or eliminate the Benefits by first reducing or eliminating those payments or benefits which are not payable in cash and then by reducing or eliminating cash payments, in each case in reverse order beginning with payments or benefits which are to be paid the farthest in time from the Determination (as hereinafter defined). Any notice given by the Grantee pursuant to the preceding sentence shall take precedence over the provisions of any other plan, arrangement or agreement governing the Grantee's rights and entitlements to any benefits or compensation..

2. **<u>Determination</u>**. A determination as to whether the Benefits shall be reduced to the Limited Benefit Amount pursuant to this Agreement and the amount of such Limited Benefit Amount shall be made by the Corporation's independent public accountants or another certified public accounting firm or executive compensation consulting firm of national reputation designated by the Corporation (the "**Firm**") at the Corporation's expense. The Firm shall provide its determination (the "**Determination**"), together with detailed supporting calculations and documentation to the Corporation and the Grantee within ten (10) business days of the date of termination of the Grantee's employment, if applicable, or such other time as reasonably requested by the Corporation or the Grantee (provided the Grantee reasonably believes that any of the Benefits may be subject to the Excise Tax), and if the Firm determines that no Excise Tax is payable by the Grantee with respect to any Benefits, it shall furnish the Grantee with an opinion reasonably acceptable to the Grantee that no Excise Tax will be imposed with respect to any such Benefits. Unless the Grantee provides written notice to the Corporation within ten (10) business days of the delivery of the Determination to the Grantee that he disputes such Determination, the Determination shall be binding, final and conclusive upon the Corporation and the Grantee.

Exhibit 10.55

[Company Letterhead]

December 18, 2017

[NAME]

Re: ***Change in Control Agreement***

Dear [NAME]:

I write concerning the outstanding award of restricted stock units with respect to **[______]** common shares of Sphere 3D Corp. (the "**Company**"), which was granted to you by the Company on or about May 10, 2017. Such award (the "**Award**") was granted pursuant to the Company's 2015 Performance Incentive Plan (the "**Plan**") and a restricted stock unit agreement entered into by you and the Company to evidence the Award (the "**Award Agreement**").

The purpose of this letter is to set forth our agreement to amend the Award Agreement to provide that if a Change in Control Event (as such term is defined in Exhibit A to this letter) occurs and you are a member of the Company's Board of Directors immediately prior to such Change in Control Event, the Award, to the extent then outstanding and unvested, shall become fully vested as of (or, as appropriate to give effect to the acceleration, immediately prior to) the Change in Control Event.

Except as expressly set forth above, this letter agreement does not modify any other terms of the Award or the Award Agreement. In the event of a conflict or inconsistency between the provisions of this letter agreement and the provisions of the Award Agreement, the provisions of this letter agreement will control.

If this letter accurately sets forth our agreement with respect to the foregoing matters, please sign the enclosed copy of this letter and return it to me.

Sincerely,

____
Eric Kelly
Chief Executive Officer

Acknowledged and Agreed:

By: __________
[NAME]

EXHIBIT A

DEFINITION OF CHANGE IN CONTROL EVENT

As used in this letter agreement, "**Change in Control Event**" means the occurrence of any of the following:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (such individual, entity or group, a "**Person**") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Company (the "**Outstanding Company Common Shares**") or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that, for purposes of this clause (a), any acquisition by any entity pursuant to a transaction that complies with all of clauses (b)(1), (2) and (3) below shall not constitute a Change in Control Event;

(b) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) full fiscal quarters as reflected in the Company's financial statements, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a "**Business Combination**"), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) fiscal quarters as reflected in the Company's financial statements, either directly or through one or more subsidiaries (a "**Parent**")) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(c) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a transaction that does not constitute a Change in Control Event under clause (b) above.

Exhibit 10.56

[Company letterhead]

December 18, 2017

Peter Tassiopoulos
Sphere 3D Corp.
125 S. Market St., Suite 1300
San Jose, CA 95113

Re: **Retention Agreement**

Dear Peter:

I am pleased to inform you that the Board of Directors of Sphere 3D Corp. (the "**Company**") has approved a new retention arrangement for you, effective as of the date set forth above, to receive the benefits described below if either a Change in Control Event occurs or if your employment is terminated by the Company without Cause or by you for Good Reason prior to a Change in Control Event. (Capitalized terms have the meanings given in Exhibit A to this letter if not otherwise defined herein.). The retention benefits are subject to the terms and conditions set forth in this letter agreement (this "**Agreement**"). This Agreement supersedes and replaces in its entirety your severance letter agreement with the Company dated November 10, 2017 (the "**Prior Agreement**").

1. Change in Control Event. If a Change in Control Event occurs and you remain employed with the Company or any of its subsidiaries as of immediately prior to the Change in Control Event, you will be entitled to receive (a) an amount equal to Three Hundred Sixty Thousand U.S. Dollars (US$360,000), such amount to be paid in a lump sum on the first business day after the Release becomes effective and in all events within sixty (60) days after the Change in Control Event occurs (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years) (the "**Retention Bonus**"); (b) your equity-based awards granted by the Company, to the extent then outstanding and unvested, will accelerate and fully vest (and, in the case of options and similar awards, be fully exercisable) upon (or immediately prior to) the Change in Control Event (the "**Equity Acceleration**"); and (c) upon a termination of your employment with the Company (or one of its successors or affiliates) on or after the Change in Control Event either by the Company or such successor or affiliate without Cause or by you for Good Reason, you will be entitled to a cash lump sum payment equal to the non-discounted present value of your expected premiums charged to continue health coverage for you (and, if applicable, your eligible dependents) pursuant to the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**") for twelve (12) months following your termination date (the "**COBRA Benefit**"), such amount to be determined by the Company in its reasonable discretion based on your coverage elections as in effect immediately prior to your termination of employment and the estimated monthly premium for such COBRA coverage determined as of your termination date, such amount to be paid within sixty (60) days following your termination date (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years).

2. Termination Without Cause or for Good Reason Prior to Change in Control Event. If, at any time prior to a Change in Control Event, your employment with the Company or one of its subsidiaries is terminated by the Company or such subsidiary without Cause or by you for Good Reason, you will be entitled to receive payment of the Retention Bonus and the COBRA Benefit as set forth above (calculated based on your health coverage benefits as in effect immediately prior to your termination), such amounts to be paid together within sixty (60) days following your termination date (provided that if such 60-day period spans two calendar years, such payment will be made in the second of such two years). In addition, you will be entitled to the Equity Acceleration provided above with respect to your equity-based awards granted by the Company that are outstanding and unvested as of such a termination of your employment.

3. Conditions on Benefits. Notwithstanding the foregoing provisions, your right to receive any of the payments and benefits described in Sections 1 and 2 above is conditioned on both (i) your signing and delivering to the Company a release of claims in a form acceptable to the Company (the "**Release**") within twenty-one (21) days (or such longer period of time as is required to make the Release maximally enforceable under applicable law) after the date on which the Company provides the Release to you (and you not revoking such Release within any revocation period provided by applicable law), and (ii) your continued compliance with your obligations to the Company under Article 5.00 of the Consulting Agreement between the Company and PT & Associates Consulting Inc. dated March 1, 2013 (the "**Confidentiality Agreement**"). The Company will provide the form of Release to you within seven (7) days after your termination date.

4. Other Terminations; No Duplication of Benefits. For purposes of clarity, if your employment with the Company or any of its subsidiaries terminates prior to a Change in Control Event for any reason other than a termination by the Company or such subsidiary without Cause or by you for Good Reason, you will not be entitled to any payments or benefits under this Agreement. In no event will you be entitled to benefits under both Sections 1 and 2 of this Agreement. In addition, only the first Change of Control Event that occurs after the date of this Agreement will be taken into account for purposes of this Agreement, and any Change of Control Event that may occur thereafter will be disregarded.

5. Miscellaneous. Each of the payments provided in this Agreement is subject to all applicable tax withholding. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, reorganization or otherwise, including a Change in Control Event) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement in the same manner and to the same extent the Company would be required to perform if no such succession had taken place. This Agreement will be binding upon and inure to the benefit of the Company and any such successor to the Company and will inure to the benefit of and be enforceable by your successors. Nothing contained in this Agreement constitutes an employment or service commitment by the Company (or any of its affiliates or successors) or affects your status as an employee at will who is subject to termination without cause at any time (subject to the provisions hereof). This Agreement, together with the Confidentiality Agreement, contains all of the terms and conditions of the retention benefits provided herein and supersedes all prior understandings and agreements, written or oral, between you and the Company and any of its affiliates with respect thereto (including, without limitation, the Prior Agreement). This Agreement may be amended only by a written agreement between you and the Company that expressly refers to this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without regard to the conflicts of laws principles thereof. It is intended that any amounts payable under this Agreement shall either be exempt from or comply with Section 409A of the U.S. Internal Revenue Code so as not to subject you to payment of any additional tax, penalty or interest imposed under Section 409A, and the provisions of this Agreement will be construed and interpreted in accordance with such intent.

If this Agreement accurately reflects our understanding regarding these matters, please indicate your acceptance by where indicated below and returning it to me. A duplicate copy of this Agreement is included for your records.

SPHERE 3D CORP.

By: ____________

Print Name: Eric L. Kelly

Title: Chairman and CEO

Acknowledged and Agreed:

____

Peter Tassiopoulos

Date: ____________

EXHIBIT A

For purposes of this Agreement, the following definitions will apply:

- "**Cause**" has the meaning given to such term in any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part with respect to your obligations or otherwise relating to the business of the Company or any of its subsidiaries that causes material harm to the Company or such subsidiary or to the reputation of the Company or such subsidiary; (b) your material breach of any agreement between you and the Company or one of its subsidiaries, which breach you fail to cure within thirty (30) days after receiving written notice from the Company's Board of Directors (the "**Board**") that specifies the specific conduct giving rise to the alleged breach; (c) your conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) your willful neglect of duties as reasonably determined by the Board, which you fail to cure within thirty (30) days after receiving written notice from the Board that specifies the specific duties that you have failed to perform.

- "**Change in Control Event**" means the occurrence of any of the following:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) (such individual, entity or group, a "**Person**") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Company (the "**Outstanding Company Common Shares**") or (2) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the "**Outstanding Company Voting Securities**"); provided, however, that, for purposes of this clause (a), any acquisition by any entity pursuant to a transaction that complies with all of clauses (b)(1), (2) and (3) below shall not constitute a Change in Control Event;

(b) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) full fiscal quarters as reflected in the Company's financial statements, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each, a "**Business Combination**"), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Company or assets of the Company that account for more than fifty percent (50%) of the Company's revenue for the immediately preceding four (4) fiscal quarters as reflected in the Company's financial statements, either directly or through one or more subsidiaries (a "**Parent**")) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the

then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(c) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company other than in the context of a transaction that does not constitute a Change in Control Event under clause (b) above.

- "**Good Reason**" has the meaning given to such term in any employment agreement between you and the Company or any of its subsidiaries as in effect on the date of termination of your employment or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the occurrence (without your consent) of any one or more of the following conditions: (a) a reduction in your rate of base salary or your target annual bonus opportunity by more than ten percent (10%) from the level in effect immediately prior to the Change in Control Event; (b) a material reduction in your authorities, duties or responsibilities from the level in effect immediately prior to the Change in Control Event; (c) a change in the geographic location of your principal office with the Company (or any subsidiary or affiliate thereof or successor thereto) by more than fifty (50) miles from the location as of the Change in Control Event; or (d) any action or inaction by the Company (or any subsidiary or affiliate thereof or successor thereto) that constitutes a material breach of the provisions of this Agreement; provided, however, that any such condition or conditions, as applicable, shall not constitute Good Reason unless (x) you provide written notice to the Company of the condition claimed to constitute Good Reason within thirty (30) days of the initial existence of such condition(s), (y) the Company fails to remedy such condition(s) within thirty (30) days of receiving such written notice thereof, and (z) your employment with the Company terminates within ninety (90) days following the initial existence of the condition claimed to constitute Good Reason.

Exhibit 10.57

SPHERE 3D CORP.
2015 PERFORMANCE INCENTIVE PLAN
NONQUALIFIED STOCK OPTION AGREEMENT

THIS NONQUALIFIED STOCK OPTION AGREEMENT (this "**Option Agreement**") dated [DATE] by and between Sphere 3D Corp., a corporation incorporated under the laws of the Province of Ontario (the "**Corporation**"), and [NAME] (the "**Grantee**") evidences the nonqualified stock option (the "**Option**") granted by the Corporation to the Grantee as to the number of the Corporation's Common Shares first set forth below.

Number of Common Shares: [SHARES] **Award Date:** [DATE]

Exercise Price per Share:[1] $[PRICE] **Expiration Date:**[1,] [DATE]

Vesting Commencement Date: [DATE]

<u>Vesting</u>[1,2] The Option shall become vested with respect to [___]% of the shares subject to the Option on the Vesting Commencement Date and with respect to the remainder in a series of [________] substantially equal installments on each monthly anniversary of the Vesting Commencement Date (each such date, a "**Vesting Date**") until fully vested.

The Option is granted under the Sphere 3D Corp. 2015 Performance Incentive Plan (including the Canadian Residents thereto, if applicable), as amended from time to time (the "**Plan**") and subject to the Terms and Conditions of Nonqualified Stock Option (the "**Terms**") attached to this Option Agreement (incorporated herein by this reference) and to the Plan. The Option has been granted to the Grantee in addition to, and not in lieu of, any other form of compensation otherwise payable or to be paid to the Grantee. Capitalized terms are defined in the Plan if not defined herein. The parties agree to the terms of the Option set forth herein. The Grantee acknowledges receipt of a copy of the Terms, the Plan and the Prospectus for the Plan.

SPHERE 3D CORP.
a corporation incorporated under the laws of the Province of Ontario

By:____ Name:
Title:

"GRANTEE"

____
Name:

Quality Review
Initials _______

SPHERE 3D CORP.
2015 PERFORMANCE INCENTIVE PLAN
TERMS AND CONDITIONS OF NONQUALIFIED STOCK OPTION

1. Vesting; Limits on Exercise; Incentive Stock Option Status.

The Option shall vest and become exercisable in percentage installments of the aggregate number of shares subject to the Option as set forth on the cover page of this Option Agreement. The Option may be exercised only to the extent the Option is vested and exercisable.

- Cumulative Exercisability. To the extent that the Option is vested and exercisable, the Grantee has the right to exercise the Option (to the extent not previously exercised), and such right shall continue, until the expiration or earlier termination of the Option.

- No Fractional Shares. Fractional share interests shall be disregarded, but may be cumulated.

- Minimum Exercise. No fewer than 100 Common Shares (subject to adjustment under Section 7.1 of the Plan) may be purchased at any one time, unless the number purchased is the total number at the time exercisable under the Option.

- Nonqualified Stock Option. The Option is a nonqualified stock option and is not, and shall not be, an incentive stock option within the meaning of Section 422 of the Code.

2. Continuance of Employment/Service Required; No Employment/Service Commitment.

Except as expressly provided in Section 4 below, the vesting schedule applicable to the Option requires continued employment or service through each applicable vesting date as a condition to the vesting of the applicable installment of the Option and the rights and benefits under this Option Agreement. Employment or service for only a portion of the vesting period, even if a substantial portion, will not entitle the Grantee to any proportionate vesting or avoid or mitigate a termination of rights and benefits upon or following a termination of employment or services as provided in Section 4 below or under the Plan.

Nothing contained in this Option Agreement or the Plan constitutes a continued employment or service commitment by the Corporation or any of its Subsidiaries, affects the Grantee's status, if he or she is an employee, as an employee at will who is subject to termination without cause, confers upon the Grantee any right to remain employed by or in service to the Corporation or any Subsidiary, interferes in any way with the right of the Corporation or any Subsidiary at any time to terminate such employment or service, or affects the right of the Corporation or any Subsidiary to increase or decrease the Grantee's other compensation. Nothing in this Option Agreement, however, is intended to adversely affect any independent contractual right of the Grantee without his/her consent thereto.

3. **<u>Method of Exercise of Option</u>.**

The Option shall be exercisable by the delivery to the Secretary of the Corporation (or such other person as the Administrator may require pursuant to such administrative exercise procedures as the Administrator may implement from time to time) of:

- a written notice stating the number of Common Shares to be purchased pursuant to the Option or by the completion of such other administrative exercise procedures as the Administrator may require from time to time;
- payment in full for the Exercise Price of the shares to be purchased in cash, check or by electronic funds transfer to the Corporation;
- any written statements or agreements required pursuant to Section 8.1 of the Plan; and
- satisfaction of the tax withholding provisions of Section 6 of this Option Agreement.

The Administrator also may, but is not required to, authorize a non-cash payment alternative by one or more of the following methods (subject in each case to compliance with all applicable laws, rules, regulations and listing requirements and further subject to such rules as the Administrator may adopt as to any such payment method):

- notice and third party payment in such manner as may be authorized by the Administrator;
- in Common Shares already owned by the Grantee, valued at their fair market value (as determined under the Plan) on the exercise date;
- a reduction in the number of Common Shares otherwise deliverable to the Grantee (valued at their fair market value on the exercise date, as determined under the Plan) pursuant to the exercise of the Option; or
- a “cashless exercise” with a third party who provides simultaneous financing for the purposes of (or who otherwise facilitates) the exercise of the Option.

4. **<u>Early Termination of Option; Possible Acceleration of Option; Employment Agreement</u>.**

4.1 Expiration Date. Subject to earlier termination as provided below in this Section 4, the Option will terminate on the “Expiration Date” set forth in the cover page of this Option Agreement (the “**Expiration Date**”).

4.2 Possible Termination of Option upon Certain Corporate Events. The Option is subject to termination in connection with certain corporate events as provided in Section 7.2 of the Plan.

4.3 Termination of Option upon a Termination of Grantee’s Employment or Services. Subject to earlier termination on the Expiration Date of the Option or pursuant to Section 4.2 above, if the Grantee ceases to be employed by or ceases to provide services to the Corporation or a Subsidiary, the following rules shall apply:

- other than as expressly provided below in this Section 4.3, (a) the Grantee will have until the date that is 3 months after his or her Termination Date (as defined below) to exercise the Option (or portion thereof) to the extent that it was vested on the Termination Date (after giving effect to any accelerated vesting that may apply pursuant to Section 4.4), (b) the Option, to the extent not vested on the Termination Date, shall terminate on the Termination Date, and (c) the Option, to the extent exercisable for the 3-month period following the Termination Date and not exercised during such period, shall terminate at the close of business on the last day of the 3-month period; and

- if the termination of the Grantee's employment or services is the result of the Grantee's death or Disability (as defined below), (a) the Grantee (or his beneficiary or personal representative, as the case may be) will have until the date that is 12 months after the Grantee's Termination Date to exercise the Option (or portion thereof) to the extent that it was vested on the Termination Date (after giving effect to any accelerated vesting that may apply pursuant to Section 4.4), (b) the Option, to the extent not vested on the Termination Date, shall terminate on the Termination Date, and (c) the Option, to the extent exercisable for the 12-month period following the Termination Date and not exercised during such period, shall terminate at the close of business on the last day of the 12-month period.

In all events the Option is subject to earlier termination on the Expiration Date of the Option or as contemplated by Section 4.2. The Administrator shall be the sole judge of whether the Grantee continues to render employment or services for purposes of this Option Agreement.

For purposes hereof, "**Termination Date**" means the Grantee's last day of actual and active employment or service with the Corporation or any of its Subsidiaries. For greater certainty, no period of notice of termination, if any, or payment in lieu of notice that is given or ought to have been given pursuant to the Grantee's applicable employment agreement, contract for service or at law that follows or is in respect of a period after the last date of actual and active employment will be considered as extending Grantee's period of employment or services for purposes of determining the Grantee's entitlement under the Option.

4.4 Acceleration Upon Certain Terminations.

(a) If either (i) the Grantee's employment or service with the Corporation or one of its Subsidiaries terminates due to the Grantee's Disability or death, or (ii) a Change in Control Event occurs and, at any time within sixty (60) days before or two (2) years after the Change in Control Event, the Grantee's employment or service with the Corporation or one of its Subsidiaries is terminated by the Corporation or such Subsidiary without Cause or by the Grantee for Good Reason, the Option, to the extent then outstanding and unvested, shall vest and be exercisable in full upon the date of such termination of employment or service (or, if later, upon the Change in Control Event).

(b) If the Grantee's employment or service with the Corporation or one of its Subsidiaries is terminated by the Corporation or such Subsidiary without Cause or by the Executive for Good Reason, and such termination occurs at any time on or before December 1, 2016, the Option, to the extent then outstanding and unvested, shall vest and be exercisable in full upon the Grantee's Termination Date.

(c) If the Grantee's employment or service with the Corporation or one of its Subsidiaries is terminated by the Corporation or such Subsidiary without Cause or by the Grantee for Good Reason, and such termination occurs at any time after December 1, 2016 (other than a termination that occurs in connection with a Change of Control as contemplated by Section 4.4(b) above), the Option will vest on the Termination Date with respect to (i) the number of shares subject to any portion of the Option that is scheduled to vest on any Vesting Date that occurs within the period of twelve (12) months following the Termination Date; and (ii) if any Vesting Date is scheduled to occur more than twelve (12) months following the Termination Date, a number of shares subject to the Option determined by multiplying (x) the number of shares subject to the portion of the Option that would have otherwise vested on the first Vesting Date of the Option that follows the first anniversary of the Grantee's Termination Date, by (y) a fraction, the numerator of which will be the number of whole months that have elapsed between the Vesting Date that immediately precedes the first anniversary of the Grantee's Termination Date and the first anniversary of the Grantee's Termination Date, and the denominator of which will be the total number of months between the Vesting Date that immediately precedes the first anniversary of the Grantee's Termination Date and the next scheduled Vesting Date that follows the first anniversary of the Grantee's Termination Date. Any portion of the Option that is not vested after giving effect to the preceding sentence shall terminate on the Termination Date.

(c) Notwithstanding any other provision herein or in the Plan, as a condition precedent to any acceleration of vesting pursuant to this Section 4.4, the Grantee shall provide the Corporation with a valid, executed general release agreement in the form attached to any employment, severance, retention or similar agreement the Grantee may have with the Corporation or any of its Subsidiaries in effect on the Award Date (or, if there is no such agreement or no such form of release attached thereto, in a form acceptable to the Corporation), and such release shall have not been revoked pursuant to any revocation rights afforded by applicable law. The Corporation shall provide the final form of release agreement to the Grantee not later than seven (7) days following the Termination Date, and the Grantee shall be required to execute and return such release to the Corporation within twenty-one (21) days (or forty-five (45) days if such longer period of time is required to make the release maximally enforceable under applicable law) after the Corporation provides the form of release to the Grantee.

4.5 Employment Agreement. The Option is also subject to any rights to accelerated vesting the Grantee may have under any employment, severance, retention or similar agreement with the Corporation or any of its Subsidiaries in effect on the Award Date (the "**Employment Agreement**"), provided that to the extent the Employment Agreement and this Option Agreement provide different rights to accelerated vesting of the Option in connection with a termination of the Grantee's employment or service, the Grantee shall be entitled to the acceleration provided under either the Employment Agreement or this Option Agreement, whichever agreement provides the greater benefit to the Grantee in the circumstances.

4.6 Defined Terms. For purposes of this Option Agreement, the terms Cause, Good Reason, Disability and Change of Control have the meanings given to such terms in the Employment Agreement; provided, however, that for purposes of the Option, the definition of "Change of Control" shall refer to a change in control of the Corporation that occurs after the Award Date (as determined under the applicable clauses of such definition) and not to a change in control of Overland Storage, Inc.

5. Non-Transferability.

The Option and any other rights of the Grantee under this Option Agreement or the Plan are nontransferable and exercisable only by the Grantee, except as set forth in Section 5.7 of the Plan.

6. Tax Withholding.

Upon any exercise or payment of the Option, or upon any other tax withholding event with respect to the Option, arrangements satisfactory to the Corporation shall be made to provide for any taxes the Corporation or any of its Subsidiaries may be required to withhold with respect to such event or payment as provided in Section 8.5 of the Plan. With the Corporation's consent and subject to the Corporation's compliance with all applicable laws, these arrangements may include (a) withholding Common Shares that otherwise would be issued to the Grantee pursuant to the Option, (b) surrendering Common Shares that the Grantee previously acquired or (c) an irrevocable arrangement (on terms reasonably acceptable to the Corporation) with a third-party broker to use the proceeds of a sale of Common Shares on the market to provide for such tax withholding. In the case of clauses (a) and (b) above, the fair market value of these shares (as determined under the Plan as of the date when taxes otherwise would have been withheld in cash), will be applied to the withholding taxes.

7. No Shareholder Rights.

The Grantee shall have no rights as a shareholder of the Corporation, no dividend rights and no voting rights, with respect to the Option and any Common Shares underlying or issuable in respect of the Option until such time as the Option is exercised and such Common Shares are actually issued to and held of record by the Grantee. No adjustments will be made for dividends or other rights of a holder for which the record date is prior to the date of issuance of such shares.

8. Notices.

Any notice to be given under the terms of this Option Agreement shall be in writing and addressed to the Corporation at its principal office to the attention of the Secretary, and to the Grantee at the address last reflected on the Corporation's payroll records, or at such other address as either party may hereafter designate in writing to the other. Any such notice shall be delivered in person or shall be enclosed in a properly sealed envelope addressed as aforesaid, registered or certified, and deposited (postage and registry or certification fee prepaid) in a post office or branch post office regularly maintained by the United States Government. Any such notice shall be given only when received, but if the Grantee is no longer employed by the Corporation or a Subsidiary, shall be deemed to have been duly given five business days after the date mailed in accordance with the foregoing provisions of this Section 7.

9. Plan.

The Option and all rights of the Grantee under this Option Agreement are subject to the terms and conditions of the Plan (including, for greater certainty and to the extent applicable, the Canadian Residents Addendum to the Plan), incorporated herein by this reference. In the event of any conflict between the provisions of the Plan and this Option Agreement, the provisions of the Plan shall control. The Grantee agrees to be bound by the terms of the Plan and this Option Agreement. The Grantee acknowledges having read and understanding the Plan, the Prospectus for the Plan, and this Option Agreement. Unless otherwise expressly provided in other sections of this Option Agreement, provisions of the Plan that confer discretionary authority on the Board or the Administrator do not and shall not be deemed to create any rights in the Grantee unless such rights are expressly set forth herein or are otherwise in the sole discretion of the Board or the Administrator so conferred by appropriate action of the Board or the Administrator under the Plan after the date hereof.

10. Entire Agreement.

This Option Agreement and the Plan, together with the Employment Agreement to the extent referred to herein, constitute the entire agreement and supersede all prior understandings and agreements, written or oral, of the parties hereto with respect to the subject matter hereof. The Plan and this Option Agreement may be amended pursuant to Section 8.6 of the Plan. Such amendment must be in writing and signed by the Corporation. The Corporation may, however, unilaterally waive any provision hereof in writing to the extent such waiver does not adversely affect the interests of the Grantee hereunder, but no such waiver shall operate as or be construed to be a subsequent waiver of the same provision or a waiver of any other provision hereof.

11. Governing Law.

This Option Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to conflict of law principles thereunder.

12. Effect of this Agreement.

Subject to the Corporation's right to terminate the Option pursuant to Section 7.2 of the Plan, this Option Agreement shall be assumed by, be binding upon and inure to the benefit of any successor or successors to the Corporation.

13. **Counterparts.**

This Option Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

14. **Section Headings.**

The section headings of this Option Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

15. **Language.**

The parties hereto have agreed that this Option Agreement and the Plan be drafted in English. Les parties aux présentes ont convenu que le présent document et les règles du régime soient rédigés en anglais.

16. **No Advice Regarding Grant.**

The Grantee is hereby advised to consult with his or her own tax, legal and/or investment advisors with respect to any advice the Grantee may determine is needed or appropriate with respect to the Option (including, without limitation, to determine the foreign, state, local, estate and/or gift tax consequences with respect to the Option and any shares that may be acquired upon exercise of the Option). Neither the Corporation nor any of its officers, directors, affiliates or advisors makes any representation (except for the terms and conditions expressly set forth in this Option Agreement) or recommendation with respect to the Option. Except for the withholding rights contemplated by Sections 3 and 6 above and Section 8.5 of the Plan, the Grantee is solely responsible for any and all tax and other liability that may arise with respect to the Option and any shares that may be acquired upon exercise of the Option (including any sale of such shares).

17. **Insider Trading Rules.**

The Grantee hereby acknowledges being subject to all applicable laws, rules and regulations, as well as Corporation policies, regarding insider trading.

EXHIBIT A

DEFINED TERMS

For purposes of this Option Agreement, the following definitions shall apply:

- "**Cause**" has the meaning given to such term in any employment agreement between the Grantee and the Corporation or any of its Subsidiaries as in effect on the Award Date or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on the Grantee's part with respect to the Grantee's obligations or otherwise relating to the business of the Corporation or any of its Subsidiaries that causes material harm to the Corporation or such Subsidiary or to the reputation of the Corporation or such Subsidiary; (b) the Grantee's material breach of any agreement between the Grantee and the Corporation or one of its Subsidiaries, which breach the Grantee fails to cure within thirty (30) days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) the Grantee's conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) the Grantee's willful neglect of duties as reasonably determined by the Board, which the Grantee fails to cure within thirty (30) days after receiving written notice from the Board that specifies the specific duties that the Grantee has failed to perform.

- "**Good Reason**" has the meaning given to such term in any employment agreement between the Grantee and the Corporation or any of its Subsidiaries as in effect on the Award Date or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean a voluntary termination by the Grantee of the Grantee's employment with the Corporation or one of its Subsidiaries within one (1) year after the initial occurrence of one or more of the following (without the Grantee's written consent): (a) the Corporation or such Subsidiary reduces the Grantee's base compensation (including commissions) by more than ten percent (10%), (b) the Grantee's authority, responsibilities and/or duties are materially reduced so that the Grantee's duties are no longer consistent with the Grantee's position as of the Award Date and the Grantee no longer reports directly to the Board of Directors of the Corporation; (c) a material breach by the Corporation or one of its Subsidiaries of any agreement between the Grantee and the Corporation or such Subsidiary; or (d) the Corporation or one of its Subsidiaries relocates the Grantee's principal place of work to a location more than fifty (50) miles from the Grantee's principal place of work as of the Award Date; provided, however, that such a termination by the Grantee shall not be a termination for Good Reason unless the Grantee notifies the Corporation in writing within sixty (60) days following the initial existence of the circumstance constituting Good Reason, the Corporation is given thirty (30) days from the receipt of such notice in which the Corporation may remedy or cure such condition, and the Corporation fails to remedy or cure the condition set forth in the Grantee's notice within thirty (30) days of receipt of such notice. For purposes of the foregoing, if the Grantee does not timely provide notice to the Corporation as to a particular circumstance constituting Good Reason, then the Grantee shall be deemed to have waived the right to terminate for Good Reason with respect to such circumstance.

- "**Disability**" has the meaning given to such term (or a similar term) in any employment agreement between the Grantee and the Corporation or any of its Subsidiaries as in effect on the Award Date or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean the Grantee (as determined solely by the Administrator on the basis of such medical evidence as the Administrator deems warranted under the circumstances) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

- “**Change in Control Event**” means any of the following:

(i) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act (a “**Person**”)) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (1) the then-outstanding common shares of the Corporation (the “**Outstanding Company Common Shares**”) or (2) the combined voting power of the then-outstanding voting securities of the Corporation entitled to vote generally in the election of directors (the “**Outstanding Company Voting Securities**”); provided, however, that, for purposes of this clause (i), the following acquisitions shall not constitute a Change in Control Event; (A) any acquisition directly from the Corporation, (B) any acquisition by the Corporation, (C) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any affiliate of the Corporation or a successor, or (D) any acquisition by any entity pursuant to a transaction that complies with clauses (iii) (1), (2) and (3) below;

(ii) Individuals who, as of the Award Date, constitute the Board (the “**Incumbent Board**”) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Award Date whose election, or nomination for election by the Corporation’s shareholders, was approved by a vote of at least two-thirds of the directors then comprising the Incumbent Board (including for these purposes, the new members whose election or nomination was so approved, without counting the member and his predecessor twice) shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Corporation or any of its Subsidiaries, a sale or other disposition of all or substantially all of the assets of the Corporation, or the acquisition of assets or stock of another entity by the Corporation or any of its Subsidiaries (each, a “**Business Combination**”), in each case unless, following such Business Combination, (1) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Shares and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then-outstanding common shares and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that, as a result of such transaction, owns the Corporation or all or substantially all of the Corporation's assets directly or through one or more subsidiaries (a “**Parent**”)) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Shares and the Outstanding Company Voting Securities, as the case may be, (2) no Person (excluding any entity resulting from such Business Combination or a Parent or any employee benefit plan (or related trust) of the Corporation or such entity resulting from such Business Combination or Parent) beneficially owns, directly or indirectly, more than fifty percent (50%) of, respectively, the then-outstanding shares of common stock of the entity resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such entity, except to the extent that the ownership in excess of fifty percent (50%) existed prior to the Business Combination, and (3) at least a majority of the members of the board of directors or trustees of the entity resulting from such Business Combination or a Parent were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board providing for such Business Combination; or

(iv) Approval by the shareholders of the Corporation of a complete liquidation or dissolution of the Corporation other than in the context of a transaction that does not constitute a Change in Control Event under clause (iii) above.

Effective as of November 30, 2017

Overland Storage, Inc.
9112 Spectrum Center Boulevard
San Diego, CA 92123
Attention: Eric Kelly, Chief Executive Officer

Re: **Consent re Extension of Milestone Under Credit Agreement and Amendment to Credit Agreement**

Dear Eric:

Reference is hereby made to that certain Credit Agreement, dated as of April 6, 2016 (as amended, restated, supplemented, or otherwise modified from time to time, the "*Credit Agreement*"), by and among Overland Storage, Inc., a California corporation (the "*Company*"), Tandberg Data GmbH, a German limited liability company registered with the commercial register of the local court in Dortmund under HRB 5589 ("*Subsidiary Borrower*" and, together with the Company, the "*Borrowers*"), and Opus Bank, a California commercial bank (the "*Lender*"). Capitalized terms used in this letter agreement (this "*Consent*") and which are not otherwise defined shall have the respective meanings ascribed to such terms in the Credit Agreement.

1. Consent.

Under Section 6.17(i) of the Credit Agreement, the Borrowers shall comply on a timely basis with the Business and Financial Plan. The Business and Financial Plan provides that the Company shall complete an equity raise by November 30, 2017 (the "*Existing Deadline*"), resulting in gross proceeds of at least $2,000,000 to the Company (the "*Equity Raise Milestone*"). The Company has requested that the Lender (i) consent to a modification to the Equity Raise Milestone to include the issuance of debt by the Company as an alternative to an equity raise to satisfy the Equity Raise Milestone, so long as such debt is unsecured and at all times prior payment in full of the Obligations under the Loan Documents remains unsecured, and is subordinated on terms and conditions (including payment terms, maturity date, interest rates, covenants, remedies, defaults and other material terms) acceptable to Lender (such a debt issuance, a "*Permitted Debt Issuance*"), (ii) consent to Permitted Debt Issuances in an aggregate amount not to exceed $6,000,000, and (iii) extend the Existing Deadline for the Equity Raise Milestone, as amended herein, to December 11, 2017 (the "*New Deadline*"). Failure to satisfy the Equity Raise Milestone, as amended herein, by the New Deadline shall constitute an immediate Event of Default.

Subject to the terms and conditions, and upon the effectiveness, of this Consent, the Lender hereby consents to the items set forth in clauses (i), (ii) and (iii) in the immediately preceding paragraph.

2. Amendments to Credit Agreement.

In connection with the foregoing, and as a condition to the foregoing consent by Lender, the Borrowers and Lender hereby agree that the Credit Agreement shall be amended as follows:

(a) Section 1.02 of the Credit Agreement is hereby amended to add the following new clause (e):

(e) The terms "*paid in full*", "*payment in full*" or other words of like import in any Loan Document mean, with respect to the Obligations, such time when the aggregate amount of all Obligations owing to the Lender has been unconditionally paid in full in cash (subject to that certain letter agreement dated as of November 27, 2017 by and between Lender and Company), all letters of credit issued under this Agreement have terminated and/or have been cash collateralized in a manner satisfactory to the Lender and all commitments and obligations of the Lender to make loans or other extensions of credit under the Loan Documents have been terminated.

(b) Section 7.10 of the Credit Agreement is hereby amended and restated in its entirety as follows:

7.10 Certain Indebtedness Payments; Amendments to Documents.

(a) Pay, prepay, redeem, purchase, defease or otherwise satisfy in any manner any Indebtedness (including, without limitation, any cash payments associated with any Acquisition payments and related earn-outs) of Parent and its Subsidiaries (i) prior to the scheduled payment thereof, or (ii) during any period when a Default or an Event of Default has occurred and is continuing (or if, after giving *pro forma* effect to such payment(s)) immediately thereafter no Default or Event of Default shall have occurred and be continuing, or (iii) as prohibited by the terms of the Subordination Agreement or any other subordination provisions governing such Indebtedness; or

(b) Directly or indirectly amend, modify, or change any of the terms or provisions of any agreement, instrument, document, indenture, or other writing evidencing or concerning Indebtedness that is subject to (i) the Subordination Agreement (unless such amendment, modification, or change is permitted pursuant to the Subordination Agreement), or (ii) any other subordination provisions in favor of Lender.

3. Miscellaneous.

This Consent shall become effective upon the Lender's receipt of a counterpart of this Consent, duly executed by the Borrowers.

In seeking the Lender's consent, the Borrowers understand and acknowledge that the Lender is entering into this Consent in reliance upon, and in partial consideration for, the below representations, warranties, and covenants and agrees that such reliance is reasonable and appropriate. Accordingly, each of the Borrowers represents, warrants, and covenants that, upon giving effect to this Consent: (A) the representations and warranties contained in the Credit Agreement are and will be true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct in all material respects as of such date), and (B) no Event of Default has occurred and is continuing.

Nothing contained in this Consent shall be construed to imply a willingness on the part of the Lender to grant any similar or other future (i) consents or (ii) waivers of any of the terms and conditions of the Credit Agreement or the other Loan Documents.

Except as stated otherwise herein, each of the terms and conditions of the Credit Agreement and the other Loan Documents are hereby ratified and confirmed and shall remain in full force and effect. Nothing contained herein shall in any way prejudice, impair or effect any rights or remedies of the Lender under the Credit Agreement and the other Loan Documents.

This Consent may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

This Consent is a Loan Document.

4. Release by Loan Parties; Covenant Not to Sue.

(a) Effective on the date hereof, each Loan Party, for itself and on behalf of its successors, assigns, officers, directors, employees, agents and attorneys, and any Person acting for or on behalf of, or claiming through it, hereby waives, releases, remises and forever discharges Lender, each of its Affiliates, and each of their respective successors in title, past, present and future officers, directors, employees, limited partners, general partners, investors, attorneys, assigns, subsidiaries, shareholders, trustees, agents, Consultant and other professionals and all other persons and entities to whom Lender would be liable if such persons or entities were found to be liable to any Loan Party (each a "*Releasee*" and collectively, the "*Releasees*"), from any and all past, present and future claims, suits, liens, lawsuits, adverse consequences, amounts paid in settlement, debts, deficiencies, diminution in value, disbursements, demands, obligations, liabilities, causes of action, damages, losses, costs and expenses of any kind or character, whether based in equity, law, contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law (each a "*Claim*" and collectively, the "*Claims*"), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, matured or unmatured, foreseen or unforeseen, past or present, liquidated or unliquidated, suspected or unsuspected, which any Loan Party ever had from the beginning of the world, now has, or might hereafter have against any such Releasee which relates, directly or indirectly to the Credit Agreement, any other Loan Document, or to any acts or omissions of any such Releasee with respect to the Credit Agreement or any other Loan Document, or to the lender-borrower relationship evidenced by the Loan Documents; provided, that the releases set forth in this paragraph shall not release any Releasee from its duties and obligations from and after the date hereof that are set forth in the Credit Agreement, any Loan Document, or this Consent. As to each and every Claim released hereunder, each Loan Party hereby represents that it has received the advice of legal counsel with regard to the releases contained herein, and having been so advised, specifically waives the benefit of the provisions of Section 1542 of the Civil Code of California which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

As to each and every Claim released hereunder, each Loan Party also waives the benefit of each other similar provision of applicable federal or state law of any applicable jurisdiction, if any, pertaining to general releases after having been advised by its legal counsel with respect thereto.

(b) Each Loan Party acknowledges that it may hereafter discover facts different from or in addition to those now known or believed to be true with respect to such Claims and agrees that this instrument shall be and remain effective in all respects notwithstanding any such differences or additional facts. This release shall be and remain in full force and effect notwithstanding the discovery by any Loan Party after the date hereof (i) of any new or additional Claim against any Releasee, (ii) of any new or additional facts in any way relating to this release, (iii) that any fact relied upon by it was incorrect, or (iv) that any representation or warranty made by any Releasee was untrue or that any Releasee concealed any fact, circumstance or claim relevant to any Loan Party's execution of this release. Each Loan Party understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

Each Loan Party, for itself and on behalf of its successors, assigns, and officers, directors, employees, agents and attorneys, and any Person acting for or on behalf of, or claiming through it, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee above that (i) none of the provisions of the above release shall be construed as or constitute an admission of any liability on the part of any Releasee; (ii) it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by such Person pursuant to this Section 4; and (iii) any attempt to assert a Claim barred by the provisions of this Section 4 shall subject it to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action. Each Loan Party further agrees that it shall not dispute the validity or enforceability of the Credit Agreement or any of the other Loan Documents or any of its obligations thereunder, or the validity, priority, enforceability or the extent of Lender's Lien on any item of Collateral under the Credit Agreement or the other Loan Documents. If any Loan Party or any Person acting for or on behalf of, or claiming through it, violate the foregoing covenant, such Loan Party, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all attorneys' fees and costs incurred by such Releasee as a result of such violation. In agreeing to the foregoing release, each Loan Party expressly disclaims any reliance on any representations or warranties, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the above release do not depend in any way on any such representations or warranties, acts or omissions or the accuracy, completeness or validity thereof.

(c) The provisions of this Section 4 shall survive the termination of this Consent and the other Loan Documents and the payment in full of the Obligations.

(d) Each Loan Party acknowledges that the foregoing release is a material inducement to Lender's decision to enter into this Consent.

CALIFORNIA LAW GOVERNS THIS CONSENT WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

[*Remainder of page intentionally left blank*]

Please acknowledge the foregoing by executing and returning this letter agreement.

Very truly yours,

OPUS BANK,
as Lender

By: ____________________
Name: Andrew Jarvis
Title: Authorized Signatory

[Signature Page to Consent re Extension of Milestone Under Credit Agreement]

ACKNOWLEDGED AND AGREED:

OVERLAND STORAGE, INC.,
as a Borrower

By: ______________________
Name: Kurt Kalbfleisch
Title: Chief Financial Officer

TANDBERG DATA GMBH,
as a Borrower

By: ______________________
Name: Kurt Kalbfleisch
Title: Geschaftsfuhrer

OVERLAND STORAGE, INC., a California corporation,
as a Guarantor

By:______________________________
Name: Kurt Kalbfleisch
Title: SVP and CFO

SPHERE 3D CORP., a corporation organized under the laws of Ontario Canada,
as a Guarantor

By:______________________________
Name: Kurt Kalbfleisch
Title: SVP and CFO

SPHERE 3D INC., a corporation organized under the laws of Canada,
as a Guarantor

By:______________________________
Name: Kurt Kalbfleisch
Title: SVP, CFO, and Secretary

V3 SYSTEMS HOLDINGS, INC., a Delaware corporation,
as a Guarantor

By:______________________________
Name: Kurt Kalbfleisch
Title: Secretary and CFO

Exhibit 10.59

[Net Lease]

LEASE AGREEMENT

THIS LEASE AGREEMENT is made this 25 day of March, 2016, between PROLOGIS TLF (DALLAS), LLC, a Delaware limited liability company, solely with respect to PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership ("Landlord"), and the Tenant named below.

Tenant:	Unified ConneXions, Inc.
Tenant's Representative, Address, and Telephone:	Chris Cunningham 5151 Samuell Boulevard, Suite 130 Dallas, Texas 75228 (214) 444-7313 e-mail: chris@ucx.co
Premises:	That portion of the Building, containing approximately 19,413 rentable square feet, as determined by Landlord, as shown on Exhibit A.
Project:	Plano Distribution Center 4
Building:	Plano Distribution Center 4 2901 Summit Avenue, Suite 100 Plano, TX 75074
Tenant's Proportionate Share of Project:	28.89 %
Tenant's Proportionate Share of Building:	28.89 %
Lease Term:	Beginning on the Commencement Date and ending on the last day of the 63rd full month following the Commencement Date.
Commencement Date:	May 1, 2016
Initial Monthly Base Rent:	See Addendum 1
Initial Estimated Monthly Operating Expense Payments: (estimates only and subject to adjustment to actual costs and expenses according to the provisions of this Lease)	1. Utilities: $0.00 2. Common Area Charges: $1,132.43 3. Taxes: $2,297.21 4. Insurance: $97.07 5. Others: $404.44
Initial Estimated Monthly Operating Expense Payments:	$3,931.15
Initial Monthly Base Rent, and Estimated Operating Expense	$3,931.15
Security Deposit:	$38,000.00 (subject to reduction as set forth in Paragraph 5 below)
Brokers:	Landlord: Dave Peterson, NAI Robert Lynn Tenant: Kurt North, North Pointe Commercial Realty
Addenda:	1. Base Rent Adjustments 2. HVAC Maintenance Contract 3. Move Out Conditions 4. Construction Addendum 5. HVAC Deductible
Exhibits:	A. Site Plan B. Project Rules and Regulations

C. Commencement Date Certificate
D. Initial Improvements

1. **Granting Clause**. In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Acceptance of Premises**. Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions, and subject to Landlord's obligations with respect to the Premises as expressly set forth in Addendum 4 and Paragraph 3 below. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. In no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items that are Landlord's responsibility under Paragraph 10 and any punchlist items agreed to in writing by Landlord and Tenant. No later than 10 days after written demand is made therefor by Landlord of Tenant, Tenant shall execute and deliver to Landlord a Commencement Date Certificate in the form of Exhibit C attached to and hereby made a part of this Lease.

Subject to the vacation of the Premises by the existing tenant, if any, Landlord shall allow Tenant access to the Premises upon vacation of the Premises by the existing tenant, if any, for purposes of preparing the Premises for the commencement of Tenant's normal business operations, subject to applicable ordinances and building codes governing Tenant's right to occupy or perform in the Premises ("Early Occupancy"). During such Early Occupancy period prior to the Commencement Date, Tenant shall be bound by its obligations under the Lease, including the obligation to provide evidence of insurance, but shall not be obligated to pay the Monthly Base Rent or Operating Expenses payable by Tenant to Landlord as set forth in the Lease. Tenant shall be responsible for utilities during the Early Occupancy.

3. **Use**. The Premises shall be used only for the purpose of receiving, storing, shipping and selling (but specifically excluding retail selling) products, materials and merchandise made and/or distributed by Tenant and for such other lawful purposes as may be incidental thereto; provided, however, with Landlord's prior written consent, Tenant may also use the Premises for light manufacturing. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sale on the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Project. Outside storage, including without limitation, storage of trucks and other vehicles, is prohibited without Landlord's prior written consent; provided, however, Tenant shall have the right to park operable vehicles and trailers overnight at the truck loading docks and designated truck and trailer parking areas for the Premises and operable automobiles in the designated automobile parking areas, and further provided there is no interference with the access of other tenants to the Building and Project parking lots and truck courts. Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements"). The Premises shall not be used as a place of public accommodation under the Americans With Disabilities Act or similar state statutes or local ordinances or any regulations promulgated thereunder, all as may be amended from time to time. Landlord represents and warrants that, as of the Commencement Date, no written notice has been received by Landlord of non-compliance with any Legal Requirements in connection with the Premises. In the event that Landlord receives notice that the Premises is not in compliance with applicable Legal Requirements existing as of the Commencement Date and such non-compliance is not related to Tenant's specific use of the Premises or Tenant-Made Alterations to the Premises performed by Tenant, Landlord shall make such modifications as may be required by order or directive of applicable governmental authority in order to bring the Premises into compliance with applicable Legal Requirements as of the Commencement Date without cost or expense to Tenant and without including such cost or expense as an Operating Expense. Furthermore, in the event Landlord receives notice that the Premises is not in compliance with applicable Legal Requirements which come into effect after the Commencement Date and such non-compliance is not related to Tenant's specific use of the Premises or Tenant-Made Alterations to the Premises performed by Tenant, Landlord shall make such modifications as may be required by order or directive of applicable governmental authority in order to bring the Premises into compliance with applicable Legal Requirements which shall be chargeable to Tenant as an Operating Expense. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's use or occupation of the Premises. Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler credits. If any increase in the cost of any insurance on the Premises or the Project is caused by Tenant's use or occupation of the Premises, or because Tenant vacates the Premises (except upon expiration or other termination of the Lease and Tenant's surrender of the Premises in accordance with the terms of this Lease), then Tenant shall pay the amount of such increase to Landlord. Any occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease.

4. **Base Rent**. Tenant shall pay Base Rent in the amount set forth on Page 1 of this Lease. The Security Deposit, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable by check on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments (other than the first monthly installment of Base Rent, Operating Expenses and the Security Deposit) required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by Electronic Fund Transfer ("EFT") of immediately available federal funds before 11:00 a.m., Eastern Time at such place, within the continental United States, as Landlord may from time to time designate

to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as may be expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent or of Operating Expenses beyond 5 days after the due date thereof, and after notice as provided below, Tenant shall pay to Landlord on demand a late charge equal to 7 percent of such delinquent sum. Tenant shall not be obligated to pay the late charge until Landlord has given Tenant 5 days written notice of the delinquent payment (which may be given at any time during the delinquency); provided, however, that such notice shall not be required more than once in any 12-month period. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty or as limiting Landlord's remedies in any manner.

5. **Security Deposit**. The Security Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of Landlord's damages in case of Tenant's default. Upon each occurrence of an Event of Default (hereinafter defined), Landlord may use all or part of the Security Deposit to pay delinquent payments due under this Lease, and the cost of any damage, injury, expense or liability caused by such Event of Default, without prejudice to any other remedy provided herein or provided by law. Tenant shall pay Landlord on demand the amount that will restore the Security Deposit to its original amount. Landlord's obligation respecting the Security Deposit is that of a debtor, not a trustee; no interest shall accrue thereon. The Security Deposit shall be the property of Landlord, but shall be paid to Tenant when Tenant's obligations under this Lease have been completely fulfilled. Landlord shall not be required to keep all or any part of the Security Deposit separate from its general accounts. Landlord shall be released from any obligation with respect to the Security Deposit upon transfer of this Lease and the Premises to a person or entity assuming Landlord's obligations under this Paragraph 5.

Provided no Event of Default has occurred, exists, or would exist but for the passage of time, effective on the first day of the 27th full calendar month following the commencement date, the Security Deposit shall be reduced by $12,666.00, so that as of such date, the Security Deposit shall reflect a total amount of $25,334.00. The reduction amount shall be refunded to Tenant within 45 days after the applicable reduction date.

6. **Operating Expense Payments**. During each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as estimated by Landlord from time to time, of Tenant's Proportionate Share (hereinafter defined) of Operating Expenses for the Project. Payments thereof for any fractional calendar month shall be prorated. The term "Operating Expenses" means all costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Project including, but not limited to costs of: Taxes (hereinafter defined) and fees payable to tax consultants and attorneys for consultation and contesting taxes; insurance; utilities; maintenance, repair and replacement of all portions of the Project, including without limitation, paving and parking areas, roads, non-structural components of the roofs (including the roof membrane), alleys, and driveways, mowing, landscaping, snow removal, exterior painting, utility lines, heating, ventilation and air conditioning systems, lighting, electrical systems and other mechanical and building systems; amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; charges or assessments of any association to which the Project is subject; property management fees payable to a property manager, including any affiliate of Landlord, or if there is no property manager, an administration fee of 15 percent of Operating Expenses payable to Landlord; security services, if any; trash collection, sweeping and removal; and additions or alterations made by Landlord to the Project or the Building in order to comply with Legal Requirements (other than those expressly required herein to be made by Tenant) or that are appropriate to the continued operation of the Project or the Building as a bulk warehouse facility in the market area, provided that the cost of additions or alterations that are required to be capitalized for federal income tax purposes shall be amortized on a straight line basis over a period equal to the lesser of the useful life thereof for federal income tax purposes or 10 years. Operating Expenses do not include costs, expenses, depreciation or amortization for capital repairs and capital replacements required to be made by Landlord under Paragraph 10 of this Lease, debt service under mortgages or ground rent under ground leases, costs of restoration to the extent of net insurance proceeds received by Landlord with respect thereto, leasing commissions, or the costs of renovating space for tenants.

If Tenant's total payments of Operating Expenses for any year are less than Tenant's Proportionate Share of actual Operating Expenses for such year, then Tenant shall pay the difference to Landlord within 30 days after demand, and if more, then Landlord shall retain such excess and credit it against Tenant's next payments except that during the last calendar year of the Lease Term or any extension terms thereof, Landlord shall refund any such excess within 60 days following the termination of the Lease Term or any extension terms thereof, provided that Tenant is not in default of its obligations under this Lease. For purposes of calculating Tenant's Proportionate Share of Operating Expenses, a year shall mean a calendar year except the first year, which shall begin on the Commencement Date, and the last year, which shall end on the expiration of this Lease. With respect to Operating Expenses which Landlord allocates to the entire Project, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Project as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Project; and, with respect to Operating Expenses which Landlord allocates only to the Building, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Building as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Building. Landlord may equitably increase Tenant's Proportionate Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project or Building that includes the Premises or that varies with occupancy or use. The estimated Operating Expenses for the Premises set forth on the first page of this Lease are only estimates, and Landlord makes no guaranty or warranty that such estimates will be accurate.

7. **Utilities**. Tenant shall pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes,

penalties, surcharges or the like pertaining to Tenant's use of the Premises. Landlord may cause at Tenant's expense any utilities to be separately metered or charged directly to Tenant by the provider in the event Landlord reasonably determines that Tenant's use of such jointly metered utility materially exceeds the use of such jointly metered utility by other tenants in the Building. Tenant shall pay its share of all charges for jointly metered utilities based upon consumption, as reasonably determined by Landlord. No interruption or failure of utilities shall result in the termination of this Lease or the abatement of rent. Notwithstanding anything contained herein to the contrary, in the event that such interruption or cessation of utilities results from Landlord's negligent or willful act or omission continues beyond five (5) consecutive business days from the date of such interruption or cessation, then, provided Tenant has delivered Landlord with prompt notice of such interruption, the Base Rent and other monthly regular recurring charges of additional rent under this Lease will abate, commencing on the sixth (6th) consecutive business day the Premises remain untenantable, and continuing until the date on which the utilities are restored and the Premises are again tenantable. No abatement of rentals as hereinabove described will apply in the event such interruption of utilities is the result of Tenant's alterations to the Premises, or any negligent act or omission of Tenant, its agents, employees or contractors, or any cause other than the negligent or willful act or omission of Landlord or its employees, agents or contractors. Tenant agrees to limit use of water and sewer for normal restroom use.

8. **Taxes**. Landlord shall pay all taxes, assessments and governmental charges (collectively referred to as "Taxes") that accrue against the Project during the Lease Term, including the Texas Margins Tax, which shall be included as part of the Operating Expenses charged to Tenant. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof. All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any franchise tax, any excise, use, margin, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or upon demand, at the option of Landlord, as additional rent; provided, however, in no event shall Tenant be liable for any net income taxes imposed on Landlord unless such net income taxes are in substitution for any Taxes payable hereunder. If any such tax or excise is levied or assessed directly against Tenant or results from any Tenant-Made Alterations (defined below), then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant.

9. **Insurance**. Landlord shall maintain all risk or special form property insurance covering the full replacement cost of the Building and commercial general liability insurance on the Project in forms and amounts customary for properties substantially similar to the Project, subject to customary deductibles. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including but not limited to, rent loss insurance. All such insurance shall be included as part of the Operating Expenses charged to Tenant. The Project or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Project or Building will be determined by Landlord based upon the total insurance cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its expense, shall maintain during the Lease Term the following insurance, at Tenant's sole cost and expense: (1) commercial general liability insurance applicable to the Premises and its appurtenances providing, on an occurrence basis, a minimum combined single limit of $2,000,000; and in the event property of Tenant's invitees or customers are kept in, or about the, Premises, Tenant shall maintain warehouser's legal liability or bailee customers insurance for the full value of the property of such invitees or customers as determined by the warehouse contract between Tenant and its customer; (2) all risk or special form property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant; (3) workers' compensation insurance as required by the state in which the Premises is located and in amounts as may be required by applicable statute and shall include a waiver of subrogation in favor of Landlord; (4) employers liability insurance of at least $1,000,000; (5) business automobile liability insurance having a combined single limit of not less than $2,000,000 per occurrence insuring Tenant against liability arising out of the ownership maintenance or use of any owned, hired or nonowned automobiles; and (6) business interruption insurance with a limit of liability representing loss of at least approximately 6 months of income. Any company writing any of Tenant's insurance shall have an A.M. Best rating of not less than A-VIII and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). All commercial general liability and, if applicable, warehouser's legal liability or bailee customers insurance policies shall name Tenant as a named insured and Landlord, its property manager, and other designees of Landlord as the interest of such designees shall appear, as additional insureds. The limits and types of insurance maintained by Tenant shall not limit Tenant's liability under this Lease. Tenant shall provide Landlord with certificates of such insurance as required under this Lease prior to the earlier to occur of the Commencement Date or the date Tenant is provided with possession of the Premises, and thereafter upon renewals at least 15 days prior to the expiration of the insurance coverage. Acceptance by Landlord of delivery of any certificates of insurance does not constitute approval or agreement by Landlord that the insurance requirements of this section have been met, and failure of Landlord to identify a deficiency from evidence provided will not be construed as a waiver of Tenant's obligation to maintain such insurance. In the event any of the insurance policies required to be carried by Tenant under this Lease shall be cancelled prior to the expiration date of such policy, or if Tenant receives notice of any cancellation of such insurance policies from the insurer prior to the expiration date of such policy, Tenant shall: (a) immediately deliver notice to Landlord that such insurance has been, or is to be, cancelled, (b) shall promptly replace such insurance policy in order to assure no lapse of coverage shall occur, and (c) shall deliver to Landlord a certificate of insurance for such policy. The insurance required to be maintained by Tenant hereunder are only Landlord's minimum insurance requirements and Tenant agrees and understands that such insurance requirements may not be sufficient to fully meet Tenant's insurance needs

The all risk or special form property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors , employees, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against.

Neither party nor its officers, directors, employees, managers, agents, invitees or contractors shall be liable to the other for loss or damage caused by any risk coverable by all risk or special form property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Tenant and its agents, employees and contractors shall not be liable for, and Landlord hereby waives all claims against such parties for losses resulting from an interruption of Landlord's business, or any person claiming through Landlord, resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Tenant or its agents, employees or contractors. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all claims against such parties for losses resulting from an interruption of Tenant's business, or any person claiming through Tenant, resulting from any accident or occurrence in or upon the Premises or the Project from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

10. **Landlord's Repairs**. Landlord shall repair, at its expense and without pass through as an Operating Expense, the structural soundness of the roof (which does not include the roof membrane), the structural soundness of the foundation, and the structural soundness of the exterior walls of the Building in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. The term "walls" as used in this Paragraph 10 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers, dock plates or levelers, or office entries. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Paragraph 10, after which Landlord shall have a reasonable opportunity to repair.

11. **Tenant's Repairs**. Landlord, at Tenant's expense as provided in Paragraph 6, shall maintain in good repair and condition the parking areas and other common areas of the Building, including, but not limited to driveways, alleys, landscape and grounds surrounding the Premises. Subject to Landlord's obligation in Paragraph 10 and subject to Paragraphs 9 and 15, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, dock and loading areas, truck doors, plumbing, water and sewer lines up to points of common connection, fire sprinklers and fire protection systems, entries, doors, ceilings, windows, interior walls, and the interior side of demising walls, and heating, ventilation and air conditioning systems. Such repair and replacements include capital expenditures and repairs whose benefit may extend beyond the Term. Heating, ventilation and air conditioning systems and other mechanical and building systems exclusively serving the Premises shall be maintained at Tenant's expense pursuant to maintenance service contracts entered into by Tenant or, at Landlord's election, by Landlord, in which case the costs of such contracts entered into by Landlord shall be included as an Operating Expense. The scope of services and contractors under such maintenance contracts shall be reasonably approved by Landlord. At Landlord's request, Tenant shall enter into a joint maintenance agreement with any railroad that services the Premises. If Tenant fails to perform any repair or replacement for which it is responsible, Landlord may perform such work and be reimbursed by Tenant within 10 days after demand therefor. Subject to Paragraphs 9 and 15, Tenant shall bear the full cost of any repair or replacement to any part of the Building or Project that results from damage caused by Tenant, its agents, contractors, or invitees and any repair that benefits only the Premises.

Landlord represents and warrants to its knowledge, that as of the Commencement Date the Building's HVAC rooftop units are in good working order and Landlord warrants such systems for a period of ninety (90) days from the Commencement Date of the Lease Agreement; however, that such warranty shall not be effective for any maintenance, repair or replacements necessitated due to the misuse of, or damages caused by, Tenant, its employees, contractors, agents, subtenants, or invitees.

12. **Tenant-Made Alterations and Trade Fixtures.** Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Tenant-Made Alterations") shall be subject to Landlord's prior written consent. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations. All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval. Landlord may monitor construction of the Tenant-Made Alterations. Tenant shall reimburse Landlord for its costs in reviewing plans and specifications and in monitoring construction. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations. Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall furnish security or make other arrangements satisfactory to Landlord to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and final lien waivers from all such contractors and subcontractors. Upon surrender of the Premises, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent Landlord requires removal at Tenant's expense of any such items or Landlord and Tenant have otherwise agreed in writing in connection with Landlord's consent to any Tenant-Made Alterations. Tenant shall repair any damage caused by the removal of such Tenant-Made Alterations upon surrender of the Premises.

Tenant, at its own cost and expense and without Landlord's prior approval, may erect such shelves, racking, bins, machinery and trade fixtures (collectively "Trade Fixtures") in the ordinary course of its business provided that such items do not alter the basic character of the Premises, do not overload or damage the Premises, and may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord's requirements set forth above. Tenant shall remove its Trade Fixtures and shall repair any damage caused by such removal upon surrender of the Premises.

13. **Signs**. Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's approval and conform in all respects to Landlord's requirements.

14. **Parking**. Tenant shall be entitled to park in common with other tenants of the Project in those areas designated for nonreserved parking. Landlord may allocate parking spaces among Tenant and other tenants in the Project if Landlord reasonably determines that such parking facilities are becoming crowded. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties.

15. **Restoration.** If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 6 months, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take 6 months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events (as defined in Paragraph 33), all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration commencing on the date of such casualty event in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

Notwithstanding anything contained in the Lease to the contrary, to the extent the damage to the Project is attributable to Tenant, Tenant shall pay to Landlord with respect to any damage to the Project an amount of the commercially reasonable deductible under Landlord's insurance policy, not to exceed $10,000.00, within 30 days after presentment of Landlord's invoice.

16. **Condemnation**. If any part of the Premises or the Project should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), and the Taking would materially interfere with or impair Landlord's ownership or operation of the Project, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures, if a separate award for such items is made to Tenant.

17. **Assignment and Subletting**. Without Landlord's prior written consent, which shall not be unreasonably withheld conditioned or delayed, Tenant shall not assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises and any attempt to do any of the foregoing shall be void and of no effect. It shall be reasonable for the Landlord to withhold, delay or condition its consent, where required, to any assignment or sublease in any of the following instances: (i) the assignee or sublessee does not have a net worth calculated according to generally accepted accounting principles at least equal to the greater of the net worth of Tenant immediately prior to such assignment or sublease or the net worth of the Tenant at the time it executed the Lease; (ii) occupancy of the Premises by the assignee or sublessee would, in Landlord's opinion, violate any agreement binding upon Landlord or the Project with regard to the identity of tenants, usage in the Project, or similar matters; (iii) the identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Project; (iv) the assignment or sublease is to another tenant in the Project and is at rates which are below those charged by Landlord for comparable space in the Project; or (v) in the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease. The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may reasonably request. Landlord may revoke its consent immediately and without notice if, as of the effective date of the assignment or sublease, there has occurred and is continuing any default under the Lease. For purposes of this paragraph, a transfer of the ownership interests controlling

Tenant shall be deemed an assignment of this Lease unless such ownership interests are publicly traded. Notwithstanding the above, Tenant may assign or sublet the Premises, or any part thereof, to any entity controlling Tenant, controlled by Tenant or under common control with Tenant (a “Tenant Affiliate”), without the prior written consent of Landlord. Tenant shall reimburse Landlord for all of Landlord’s reasonable expenses in connection with any assignment or sublease not to exceed $2,000.00, provided that Tenant does not request any changes to this Lease or Landlord’s standard form of consent in connection with the proposed assignment or sublease. This Lease shall be binding upon Tenant and its successors and permitted assigns. Upon Landlord’s receipt of Tenant’s written notice of a desire to assign or sublet the Premises, or any part thereof (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within 30 days after receipt of Tenant’s notice, terminate this Lease with respect to the space described in Tenant’s notice, as of the date specified in Tenant’s notice for the commencement of the proposed assignment or sublease.

Notwithstanding any assignment or subletting, Tenant and any guarantor or surety of Tenant’s obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant’s other obligations under this Lease (regardless of whether Landlord’s approval has been obtained for any such assignments or sublettings). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder all such excess rental and other excess consideration within 10 days following receipt thereof by Tenant; provided in the event of a sublease which is less than 100% of the Premises such excess rental and other consideration shall be applied on a square foot basis.

If this Lease be assigned or if the Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant’s leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

18. **Indemnification**. Except for the negligence or intentional misconduct of Landlord, its agents, employees or contractors, and to the extent permitted by law, Tenant agrees to indemnify, defend and hold harmless Landlord, and Landlord’s agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys’ fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Project and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant’s obligations under this Paragraph 18.

19. **Inspection and Access**. Landlord and its agents, representatives, and contractors may enter the Premises at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord shall not enter the Premises for the purposes stated in this Paragraph 19 without providing at least 24 hours telephonic notice to Tenant, unless an emergency circumstance exists. Landlord and Landlord’s representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last year of the Lease Term, to prospective tenants. Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate and modify common areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation, modification or restriction materially interferes with Tenant’s use or occupancy of the Premises. At Landlord’s request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

20. **Quiet Enjoyment**. If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

21. **Surrender**. Upon termination of the Lease Term or earlier termination of Tenant’s right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received ordinary wear and tear, casualty loss and condemnation covered by Paragraphs 15 and 16 excepted and otherwise in accordance with the Move Out Conditions Addendum attached hereto. Without limiting the foregoing, Tenant shall remove any odor which may exist in the Premises resulting from Tenant’s occupancy of the Premises upon the termination of the Lease Term or earlier termination of Tenant’s right of possession. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant’s expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord’s retention and disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and obligations concerning the condition and repair of the Premises.

22. **Holding Over**. If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for

the holdover period, an amount equal to 150% of the Base Rent in effect on the termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 22 shall not be construed as consent for Tenant to retain possession of the Premises. For purposes of this Paragraph 22, "possession of the Premises" shall continue until, among other things, Tenant has delivered all keys to the Premises to Landlord, Landlord has complete and total dominion and control over the Premises, and Tenant has completely fulfilled all obligations required of it upon termination of the Lease as set forth in this Lease, including, without limitation, those concerning the condition and repair of the Premises.

23. **Events of Default**. Each of the following events shall be an event of default ("Event of Default") by Tenant under this Lease:

(i) Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of 5 days after written notice from Landlord to Tenant that such payment was due; provided, however, that Landlord shall not be obligated to provide written notice of such failure more than 1 time in any consecutive 12-month period, and the failure of Tenant to pay any second or subsequent installment of Base Rent or any other payment required herein when due in any consecutive 12-month period shall constitute an Event of Default by Tenant under this Lease without the requirement of notice or opportunity to cure; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under applicable law.

(ii) Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(iii) Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, if the same is replaced in each case, as permitted in this Lease and no lapse in coverage occurred during such replacement process.

(iv) Tenant shall not occupy or shall vacate the Premises whether or not Tenant is in monetary or other default under this Lease. Tenant's vacating of the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (a) ensure that Tenant's insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (b) ensure that the Premises are secured and not subject to vandalism, and (c) ensure that the Premises will be properly maintained after such vacation, including, but not limited to, keeping the heating, ventilation and cooling systems maintenance contracts required by this Lease in full force and effect and maintaining the utility services. Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

(v) Tenant shall attempt or there shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

(vi) Tenant shall fail to discharge any lien placed upon the Premises in violation of this Lease within 20 days after any such lien or encumbrance is filed against the Premises.

(vii) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 23, and except as otherwise expressly provided herein, such default shall continue for more than 30 days after Landlord shall have given Tenant written notice of such default (said notice being in lieu of, and not in addition to, any notice required as a prerequisite to a forcible entry and detainer or similar action for possession of the Premises).

24. **Landlord's Remedies**. Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity. Upon the termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all of the furniture, fixtures and equipment at the Premises.

If Landlord terminates this Lease, Landlord may recover from Tenant the sum of: all Base Rent and all other amounts accrued hereunder to the date of such termination; the value of the Base Rent for any periods of abated Monthly Base Rent based on the Monthly Base Rent amount that immediately follows such period of abatement; the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Landlord, and costs of removing and storing Tenant's or any other occupant's property, repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants, and all reasonable expenses incurred by Landlord in pursuing its remedies, including reasonable attorneys' fees and court costs; and the excess of the then present value of the Base Rent and other amounts payable by Tenant under this Lease as would otherwise have been required to be paid by Tenant to Landlord during the period following the termination of this Lease measured from the date of such termination to the expiration date stated in this Lease, over the present value of any net amounts which Tenant establishes Landlord can reasonably expect to recover by reletting the Premises for such period, taking into consideration the availability of acceptable tenants and other market conditions affecting leasing. Such present values shall be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

If Landlord terminates Tenant's right of possession (but not this Lease), Landlord may, but shall be under no obligation to, relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord without thereby releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Base Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting [after first deducting therefrom, for retention by Landlord, the unpaid Base Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Project before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

25. **Tenant's Remedies/Limitation of Liability**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 30 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 30 days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Project, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

26. **Landlord's Lien/Security Interest.** Landlord hereby waives any right of distraint or statutory lien for rent against Tenant's property on the Premises that would permit Landlord to possess or sell Tenant's property before obtaining a judgment. Landlord does not waive any right to obtain and enforce any judgment lien or any pre-judgment rights and remedies other than those described above.

27. **Subordination**. This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any first mortgage, now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and

thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term “mortgage” whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the “holder” of a mortgage shall be deemed to include the beneficiary under a deed of trust.

28. **Mechanic’s Liens**. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within 20 days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such 20 day period.

29. **Estoppel Certificates**. Tenant agrees, from time to time, within 10 days after request of Landlord, to execute and deliver to Landlord, or Landlord’s designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord’s default), the termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant’s obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord’s execution of this Lease. No cure or grace period provided in this Lease shall apply to Tenant’s obligations to timely deliver an estoppel certificate.

30. **Environmental Requirements**. Except for Hazardous Material contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, and except for propane used in Tenant’s forklifts in the normal course of its business, and except for Hazardous Materials contained in products stored and/or distributed during Tenant’s normal course of business in their original, sealed, and unopened containers, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord’s prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Project by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant’s transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The term “Environmental Requirements” means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term “Hazardous Materials” means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the “operator” of Tenant’s “facility” and the “owner” of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, by-products, or residues generated, resulting, or produced therefrom. No cure or grace period provided in this Lease shall apply to Tenant’s obligations to comply with the terms and conditions of this Paragraph 30.

Notwithstanding anything to the contrary in this Paragraph 30, Tenant shall have no liability of any kind to Landlord as to Hazardous Materials on the Premises caused or permitted by (i) Landlord, its agents, employees, contractors or invitees; or (ii) any other tenants in the Project or their agents, employees, contractors, subtenants, assignees or invitees.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises or the Project and loss of rental income from the Project), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys’ fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements of this Paragraph 30, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements under this Paragraph 30 by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Paragraph 30 shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant’s compliance with Environmental Requirements, its obligations under this Paragraph 30, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord’s prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant’s operations. Such inspections and tests shall be conducted at Landlord’s expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

31. **Rules and Regulations**. Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current Project rules and regulations are attached hereto as Exhibit B. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project.

32. **Security Service**. Tenant acknowledges and agrees that, while Landlord may patrol the Project, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

33. **Force Majeure**. Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord ("Force Majeure").

34. **Entire Agreement**. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

35. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Brokers**. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the broker, if any, set forth on the first page of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

37. **Miscellaneous**. (a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable national overnight courier service, postage prepaid, or by hand delivery addressed to Landlord at 2501 N. Harwood Street, Suite 2450, Dallas, TX 75201 with a copy sent to Landlord at 4545 Airport Way, Denver, Colorado 80239, Attention: General Counsel, and to Tenant at 5151 Samuell Boulevard, Suite 130, Dallas, Texas 75228, Attention: Chris Cunningham. Either party may by notice given aforesaid change its address for all subsequent notices or add an additional party to be copied on all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) In the event of (i) a default by Tenant of its obligations under the Lease, or (ii) a need by Landlord to effectuate a financing transaction or sale of the Building, or (iii) an assignment or subletting of the Lease by Tenant, then at Landlord's request from time to time Tenant shall furnish Landlord with true and complete copies of its most recent annual and quarterly financial statements prepared by Tenant or Tenant's accountants and any other financial information or summaries that Tenant typically provides to its lenders or shareholders. Upon written request from Tenant, Landlord and Tenant shall enter into a confidentiality agreement in a form mutually acceptable to Landlord and Tenant with respect to financial information provided by Tenant that is not generally available to the public.

(f) Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord Tenant will execute, a memorandum of lease.

(g) The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(h) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(i) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(j) Any amount not paid by Tenant within 5 days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or 15 percent per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(k) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Project is located, excluding any principles of conflicts of laws.

(l) Time is of the essence as to the performance of Tenant's and Landlord's obligations under this Lease.

(m) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the terms of this Lease, such exhibits or addenda shall control.

(n) In the event either party hereto initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

(o) Tenant agrees and understands that Landlord shall have the right (provided that the exercise of Landlord's rights does not adversely affect Tenant's use and occupancy of the Premises or subject Tenant to additional costs), without Tenant's consent, to place a solar electric generating system on the roof of the Building or enter into a lease for the roof of the Building whereby such roof tenant shall have the right to install a solar electric generating system on the roof of the Building. Upon receipt of written request from Landlord, Tenant, at Tenant's sole cost and expense, shall deliver to Landlord data regarding the electricity consumed in the operation of the Premises (the "Energy Data") for purposes of regulatory compliance, manual and automated benchmarking, energy management, building environmental performance labeling and other related purposes, including but not limited, to the Environmental Protection Agency's Energy Star rating system and other energy benchmarking systems. Landlord shall use commercially reasonable efforts to utilize automated data transmittal services offered by utility companies to access the Energy Data. Landlord shall not publicly disclose Energy Data without Tenant's prior written consent. Landlord may, however, disclose Energy Data that has been modified, combined or aggregated in a manner such that the resulting data is not exclusively attributable to Tenant.

(p) This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Lease. Execution copies of this Lease may be delivered by facsimile or email, and the parties hereto agree to accept and be bound by facsimile signatures or scanned signatures transmitted via email hereto, which signatures shall be considered as original signatures with the transmitted Lease having the same binding effect as an original signature on an original Lease. At the request of either party, any facsimile document or scanned document transmitted via email is to be re-executed in original form by the party who executed the original facsimile document or scanned document. Neither party may raise the use of a facsimile machine or scanned document or the fact that any signature was transmitted through the use of a facsimile machine or email as a defense to the enforcement of this Lease.

38. **Limitation of Liability of Trustees, Shareholders, and Officers of Landlord**. Any obligation or liability whatsoever of Landlord which may arise at any time under this Lease or any obligation or liability which may be incurred by it pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of, its trustees, directors, shareholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

39. **WAIVER OF JURY TRIAL. TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.**

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

Unified ConneXions, Inc.
a Texas corporation

By: /s/ Chris Cunningham
Name: Chris Cunningham
Title: VP & CFO

LANDLORD:

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P.
a Delaware limited partnership

By: Prologis L.P.
a Delaware limited partnership
its general partner

By: Prologis, Inc.
A Maryland corporation
its general partner
By: /s/ Jacob Milligan
Name: Jacob Milligan
Title: Vice President – Leasing Officer

ADDENDUM 1

BASE RENT ADJUSTMENTS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

Base Rent shall equal the following amounts for the respective periods set forth below:

Period			Monthly Base Rent
May 1, 2016	through	May 31, 2016	$0.00**
June 1, 2016	through	July 31, 2016	$0.00*
August 1, 2016	through	July 31, 2017	$8,735.85
August 1, 2017	through	July 31, 2018	$8,910.57
August 1, 2018	through	July 31, 2019	$9,088.78
August 1, 2019	through	July 31, 2020	$9,270.55
August 1, 2020	through	July 31, 2021	$9,455.96

*Beginning June 1, 2016, Tenant shall be responsible for Operating Expenses through the remainder of the Lease Term.

** From May 1, 2016 through May 31, 2016, Tenant not responsible for Base Rent or Operating Expenses.

ADDENDUM 2

HVAC MAINTENANCE CONTRACT

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

Paragraph 11, captioned “TENANT REPAIRS,” is revised to include the following:

Tenant agrees to enter into and maintain through the term of the Lease, a regularly scheduled preventative maintenance/service contract for servicing all hot water, heating and air conditioning systems and equipment within the Premises. Landlord requires a qualified HVAC contractor perform this work. A certificate must be provided to the Landlord upon occupancy of the leased Premises.

The service contract must become effective within thirty (30) days of occupancy, and service visits shall be performed on a quarterly basis. Landlord suggests that Tenant send the following list to a qualified HVAC contractor to be assured that these items are included in the maintenance contract:

1. Adjust belt tension;
2. Lubricate all moving parts, as necessary;
3. Inspect and adjust all temperature and safety controls;
4. Check refrigeration system for leaks and operation;
5. Check refrigeration system for moisture;
6. Inspect compressor oil level and crank case heaters;
7. Check head pressure, suction pressure and oil pressure;
8. Inspect air filters and replace when necessary;
9. Check space conditions;
10. Check condensate drains and drain pans and clean, if necessary;
11. Inspect and adjust all valves;
12. Check and adjust dampers;
13. Run machine through complete cycle.

ADDENDUM 3

MOVE-OUT CONDITIONS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

With respect to Paragraph 21 of the Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear, casualty loss, and condemnation covered by Paragraphs 15 and 16 excepted.

Before surrendering the Premises, Tenant shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by Tenant as may be specified for removal thereof. If Tenant fails to remove its personal property and fixtures upon the expiration or earlier termination of this Lease, the same shall be deemed abandoned and shall become the property of the Landlord. The following list is designed to assist Tenant in the move-out procedures but is not intended to be all inclusive:

1. Lights: Office, warehouse, emergency and exit lights will be fully operational with all bulbs and ballasts functioning.

2. Dock Levelers, Service Doors and Roll Up Doors: All truck doors, service doors, roll up doors and dock levelers shall be serviced and placed in good operating order. This would include the necessary replacement of any dented truck door panels and adjustment of door tension to insure property operation. All door panels which are replaced need to be painted to match the building standard.

3. Dock Seals/Dock Bumpers: Free of tears and broken backboards repaired. All dock bumpers must be left in place and well secured.

4. Structural Columns All structural steel columns in the warehouse and office shall be inspected for damage. Repairs of this nature should be pre-approved by Landlord prior to implementation.

5. Warehouse Floor: Free of stains and swept with no racking bolts and other protrusions left in floor. Cracks should be repaired with an epoxy or polymer to match concrete color. All floor striping in the Premises shall be removed with no residual staining or other indication that such striping existed.

6. Tenant-Installed Equipment and Wiring: Removed and space turned to original condition when originally leased. (Remove air lines, junction boxes, conduit, etc.)

7. Walls: Sheetrock (drywall) damage should be patched and fire-taped so that there are no holes in either office or warehouse.

8. Carpet and Tile The carpet and vinyl tiles should be in a clean condition and should not have any holes or chips in them. Landlord will accept normal wear on these items provided they appear to be in a maintained condition.

9. Roof: Any Tenant-installed equipment must be removed and roof penetrations properly repaired by licensed roofing contractor. Active leaks must be fixed and latest Landlord maintenance and repairs recommendation must have been followed. Tenant must check with Landlord’s property manager to determine if specific roofing contractor is required to perform work.

10. Signs: All exterior signs must be removed and holes patched and paint touched-up as necessary. All window signs should likewise be removed.
11. Heating and Air Conditioning System: Heating/air conditioning systems should be placed in good working order, including the necessary replacement of any parts to return the unit to a well maintained condition. This includes warehouse heaters and exhaust fans. Upon move out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition.

12. Electrical & Plumbing: All electrical and plumbing equipment to be returned in good condition and repair and conforming to code.

14. Overall Cleanliness: Clean windows, sanitize bathroom(s), vacuum carpet, and remove any and all debris from office and warehouse. Remove all pallets and debris from exterior of Premises. All trade fixtures, dumpsters, racking, trash, vending machines and other personal property to be removed.

15. Upon Completion: Contact Landlord's property manager to coordinate turning in of keys, utility changeover and obtaining of final Landlord inspection of Premises which, in turn, will facilitate refund of Security Deposit.

ADDENDUM 4

CONSTRUCTION

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

(a) Landlord agrees to furnish or perform at Landlord's sole cost and expense those items of construction and those improvements (the "Initial Improvements") specified below:

- Drive-in ramp at the location as shown on Exhibit D as "R"
- Replace carpet with VCT in the area shown on Exhibit D as "Open Office, 51' x 30'"

(b) If Tenant shall desire any changes, Tenant shall so advise Landlord in writing and Landlord shall determine whether such changes can be made in a reasonable and feasible manner. Any and all costs of reviewing any requested changes, and any and all costs of making any changes to the Initial Improvements which Tenant may request and which Landlord may agree to shall be at Tenant's sole cost and expense and shall be paid to Landlord upon demand and before execution of the change order.

(c) Landlord shall proceed with and complete the construction of the Initial Improvements. As soon as such improvements have been Substantially Completed, Landlord shall notify Tenant in writing of the date that the Initial Improvements were Substantially Completed. The Initial Improvements shall be deemed substantially completed ("Substantially Completed") when, in the opinion of the construction manager (whether an employee or agent of Landlord or a third party construction manager) ("Construction Manager"), the Initial Improvements are substantially completed except for punch list items which do not prevent in any material way the use of the Initial Improvements for the purposes for which they were intended. In the event Tenant, its employees, agents, or contractors cause construction of such improvements to be delayed, the date of Substantial Completion shall be deemed to be the date that, in the opinion of the Construction Manager, Substantial Completion would have occurred if such delays had not taken place. Without limiting the foregoing, Tenant shall be solely responsible for delays caused by Tenant's request for any changes in the plans, Tenant's request for long lead items or Tenant's interference with the construction of the Initial Improvements, and such delays shall not cause a deferral of the Commencement Date beyond what it otherwise would have been. After the date the Initial Improvements are Substantially Complete Tenant shall, upon demand, execute and deliver to Landlord a letter of acceptance of delivery of the Initial Improvements. In the event of any dispute as to the Initial Improvements the certificate of the Construction Manager shall be conclusive absent manifest error.

(d) The failure of Tenant to take possession of or to occupy the Premises shall not serve to relieve Tenant of obligations arising on the Commencement Date or delay the payment of rent by Tenant. Subject to applicable ordinances and building codes governing Tenant's right to occupy or perform in the Premises, Tenant shall be allowed to install its tenant improvements, machinery, equipment, fixtures, or other property on the Premises during the final stages of completion of construction provided that Tenant does not thereby interfere with the completion of construction or cause any labor dispute as a result of such installations, and provided further that Tenant does hereby agree to indemnify, defend, and hold Landlord harmless from any loss or damage to such property, and all liability, loss, or damage arising from any injury to the Project or the property of Landlord, its contractors, subcontractors, or materialmen, and any death or personal injury to any person or persons arising out of such installations, unless any such loss, damage, liability, death, or personal injury was caused by Landlord's negligence. Any such occupancy or performance in the Premises shall be in accordance with the provisions governing Tenant-Made Alterations and Trade Fixtures in the Lease, and shall be subject to Tenant providing to Landlord satisfactory evidence of insurance for personal injury and property damage related to such installations and satisfactory payment arrangements with respect to installations permitted hereunder. Delay in putting Tenant in possession of the Premises shall not serve to extend the term of this Lease or to make Landlord liable for any damages arising therefrom.

ADDENDUM 5

HVAC DEDUCTIBLE

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

Provided no Event of Default has occurred, exists, or would exist but for the passage of time, Landlord further agrees that if after the first ninety (90) days of the Lease Term, with respect to rooftop HVAC units identified as RTU #3 (CARRIER 48TJD009611 4696G30228) and RTU #23 (TRANE YCD150C4L0BA N34101607D), Tenant shall be responsible for the repair and replacement of such heating, ventilation or air conditioning equipment (or a component thereof) throughout the initial Lease Term for the first $1,000.00 per unit per occurrence (in addition to the costs incurred by Tenant for the quarterly maintenance service contract required herein), and for all costs in excess thereof, Landlord and Tenant shall split such excess costs on a 50/50 basis; provided that (a) Tenant has met the obligations to maintain the Office HVAC units in accordance with the Lease, and (b) such failure or repair is not the result of Tenant's negligence or misuse. This provision shall only be applicable during the initial Lease Term, and Landlord's obligations under this provision are contingent upon Tenant providing reasonably acceptable proof that Tenant has maintained an HVAC service contract in compliance with the HVAC Maintenance Contract of the Lease for the duration of the initial Lease Term.

EXHIBIT A

SITE PLAN

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

EXHIBIT B

PROJECT RULES AND REGULATIONS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

Rules and Regulations

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or its agents, or used by them for any purpose other than ingress and egress to and from the Premises.

2. Tenant shall not place any objects, including antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.

3. Except for seeing-eye dogs, no animals shall be allowed in the offices, halls, or corridors in the Project.

4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.

5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will direct the electrician as to where and how the wires may be introduced; and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense.

6. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.

7. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Further, parking any type of trucks, trailers or other vehicles in the Building is specifically prohibited. In the event that a vehicle is disabled, it shall be removed within 48 hours. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. All parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord or in the Lease.

8. Tenant shall maintain the Premises free from rodents, insects and other pests.

9. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.

10. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.

11. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises.

12. Tenant shall not permit storage outside the Premises, or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.

13. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.

14. No auction, public or private, will be permitted on the Premises or the Project.

15. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.

16. The Premises shall not be used for lodging, sleeping or cooking or for any immoral or illegal purposes or for any purpose other than that specified in the Lease. No gaming devices shall be operated in the Premises.

17. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants,

and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.

18. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.

19. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.

20. Tenant shall not permit smoking in the office areas of the Premises.

21. No racking or storage shall occur within 12-inches of demising walls, office and warehouse separation walls, exterior walls, and columns.

EXHIBIT C

FORM OF COMMENCEMENT DATE CERTIFICATE

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

COMMENCEMENT DATE CERTIFICATE

____________, 201__

TBD
Unified ConneXions, Inc.

,

RE: Lease dated ____ between Unified ConneXions, Inc. and PROLOGIS TARGETED U.S. LOGISTICS FUND, LP, a Delaware limited partnership for 2901 Summit Avenue, Plano, TX 75074

Dear ____________:

Welcome to your new facility. We would like to confirm the terms of the above referenced lease agreement:

Lease Commencement Date:
Lease Expiration Date:
Rental Commencement Date:

We are pleased to welcome you as a customer of Prologis and look forward to working with you. Please indicate your agreement with the above changes to your lease by signing and returning the enclosed copy of this letter to me. If I can be of service, please do not hesitate to contact me.

Sincerely,

Accepted by: **Unified ConneXions, Inc.** Date:

By: /s/ Chris Cunningham

Printed: Chris Cunningham

Title: VP & CFO

EXHIBIT D

INITIAL IMPROVEMENTS

ATTACHED TO AND A PART OF THE LEASE AGREEMENT
DATED MARCH 25, 2016 BETWEEN

PROLOGIS TARGETED U.S. LOGISTICS FUND, L.P., a Delaware limited partnership
and
Unified ConneXions, Inc.

Exhibit 21.1

Subsidiaries of the Company

Name of subsidiary	**Jurisdiction of Incorporation or Organization**
Sphere 3D Inc.	Ontario, Canada
V3 Systems Holdings, Inc.	Delaware, United States
Overland Storage, Inc.	California, United States
Overland Storage (Europe), Ltd.	United Kingdom
Overland Storage S.a.r.L.	France
Overland Storage GmbH	Germany
Overland Technologies Luxembourg S.a.r.L.	Luxembourg
Tandberg Data Holdings S.a.r.L.	Luxembourg
Tandberg Data SAS	France
Tandberg Data (Asia) Pte., Ltd.	Singapore
Tandberg Data (Japan), Inc.	Japan
Tandberg Data (Hong Kong), Ltd.	Hong Kong
Tandberg Data GmbH	Germany
Tandberg Data Norge AS	Norway
Guangzhou Tandberg Electronic Components Co. Ltd.	China

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form F-3 (No. 333-206357, No. 333-206358, No. 333-206359, No. 333-207384, No. 333-210735, No. 333-219383) and Form S-8 (No. 333-203149, No. 333-203151, No. 333-205236, No. 333-209251, No. 333-214605, No. 333-216209, No. 333-220152, No. 333-222771) of Sphere 3D Corp. (the "Company") of our report dated March 21, 2018, relating to the consolidated financial statements of the Company (which report expresses an unqualified opinion and includes an explanatory paragraph regarding the Company's going concern uncertainty), appearing in the Company's Annual Report on Form 10-K for the year ended December 31, 2017, filed with the Securities and Exchange Commission.

/s/ Moss Adams LLP

Moss Adams LLP

San Diego, California, U.S.A
March 21, 2018

Exhibit 31.1

CERTIFICATION

I, Eric L. Kelly, certify that:

1. I have reviewed this annual report on Form 10-K of Sphere 3D Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date: March 21, 2018

/s/ Eric L. Kelly

Eric L. Kelly
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Kurt L. Kalbfleisch, certify that:

1. I have reviewed this annual report on Form 10-K of Sphere 3D Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report;

4. The company's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the company and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the issuer's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting; and

5. The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the issuer's auditors and the audit committee of the issuer's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting.

Date: March 21, 2018

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch
Senior Vice-President and
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION. 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (the “Report”) by Sphere 3D Corp. (the “Company”), the undersigned, as the Chief Executive Officer of the Company, hereby certifies pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 21, 2018

/s/ Eric L. Kelly

Eric L. Kelly
Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION. 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the filing of the Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (the “Report”) by Sphere 3D Corp. (the “Company”), the undersigned, as the Chief Financial Officer of the Company, hereby certifies pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- the Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 21, 2018

/s/ Kurt L. Kalbfleisch

Kurt L. Kalbfleisch
Senior Vice-President and
Chief Financial Officer